

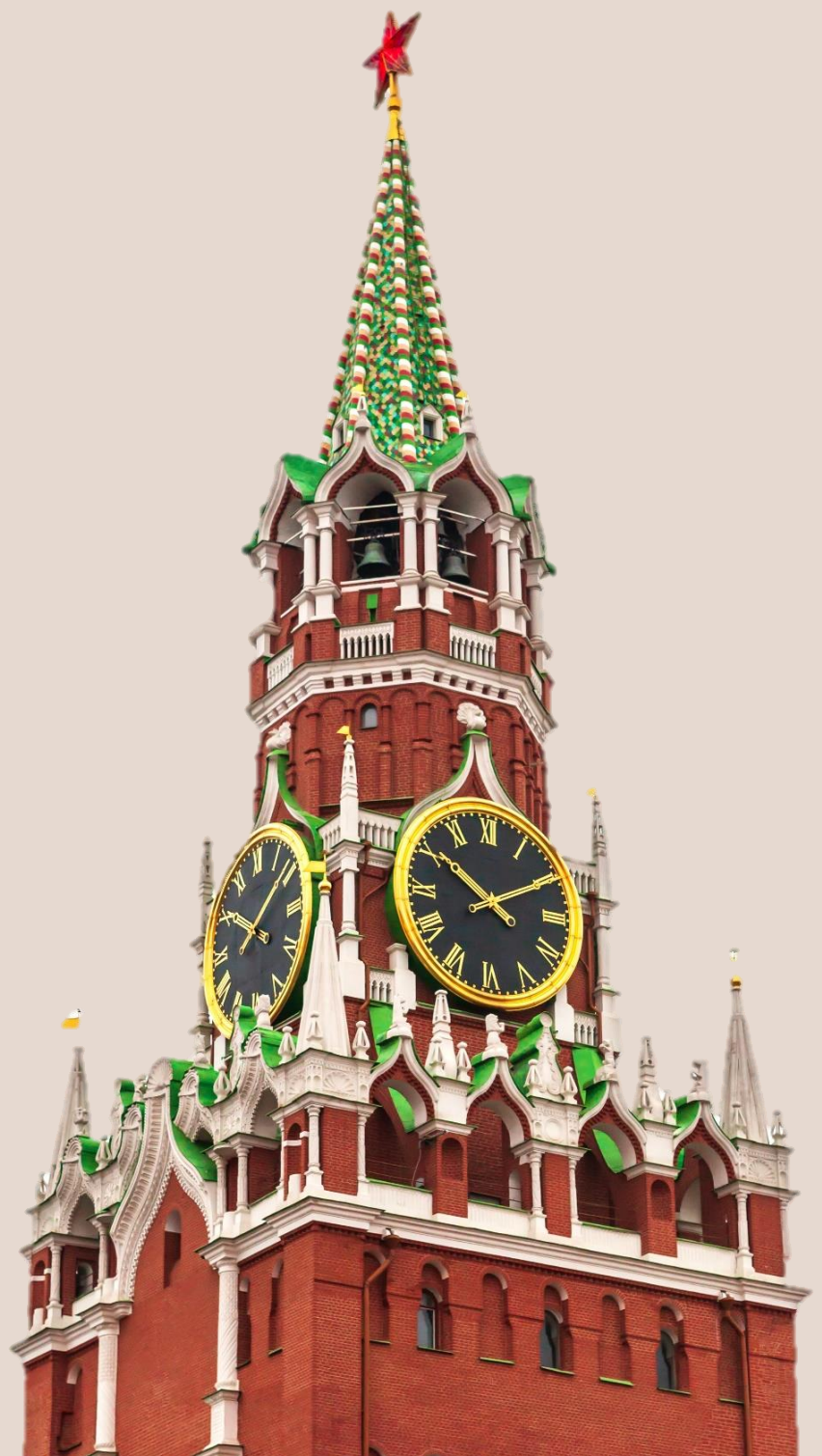
ALRUD

# Legal Regulatory Guide

Russia

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# Dear Readers!

*With the release of this paper, we are pleased to announce the launch of the new quarterly ALRUD Regulatory Guide, which has the aim of providing you with information on the most sensitive and trending amendments to the Russian administrative legislation and most interesting draft laws regulating the business in Russia.*

The world is changing fast, and today we pay more attention to the issues of environment protection including CO2 emissions, reduction of contamination and safer practices. We are more deliberate with the choice of food we eat, becoming more aware of its ingredients and its methods of processing. We cannot help but admire the recent achievements of the human brain and social communities, which have brought to us many beautiful new technologies: Artificial Intelligence, Internet of Things, nanotechnologies, wireless communication networks, big data, VR/AR, let alone all new types of disease treatment technologies and medical devices. Without a doubt, development of modern technologies, advances in science, more self-aware lifestyles and more demanding consumer-care requiring faster responses from the State authorities and adoption of appropriate legislative decisions, which leave no opportunity for new areas to remain in the gray zone of legal regulation.

This is specifically true for Russia these days, which is undergoing sensitive administrative changes. As a result of the amended Russian Constitution,

taking force on July 4th, 2020, many Federal laws formalizing public functions and distribution of powers are still expected to be adopted in the coming months, including the new Federal Constitutional Law on Government of the Russian Federation. These new changes provide a substantial momentum for the changes in the structure, competence and procedures of the public authorities.

We also observe that systems and approaches of administrative regulation, developed over past decades, are now rapidly becoming obsolete and redundant. We are witnessing that Russia is on the edge of the new age of the regulatory reality with implementation of fundamentally-new concepts of State and municipal control and supervision of various industries, switching from punitive sanctions for the already-occurred violations to a risk-oriented approach.

As a result of one of the new strategic initiatives, in the regulatory field called “*regulatory guillotine*”, developed in 2019, the President and the Federal Government committed to the termination of tens of thousands of outdated regulations, allowing

businesses to start breathing again<sup>1</sup>. It was started as a piece-by-piece consideration of many new acts, but after the Government cancelled more than 20,000 outdated acts, still in force since 1917<sup>2</sup>, in 2020, it was decided, instead of searching for the outdated acts, to completely terminate with effect from January 1st, 2021, all of those acts containing regulatory requirements, which were adopted earlier than in 2020 (see article on the Requirements Law for more detail). We see that some new legal acts have been already adopted to substitute the current ones and fill the vacuum created by the massive termination of regulations. The new legal acts continue to come in dozens, while public authorities are overwhelmed by this unprecedented cleansing of the legal field.

We therefore expect brand new pieces of regulatory requirements being enacted to fill the void of the regulatory vacuum. While the idea is to make the rules fewer and simpler, it is still to be observed what the reality will look like, as public authorities will be launching hundreds of new legal acts, redefining the regulated markets.

Of course, these are times for companies to attend to the regulatory matters that apply to them, proactively look for the

news, drafts and incentives of relevant pieces of legislation and to participate closely in the activities of various business associations, clubs and using GR instruments to make sure that the new regulations are in line with their industries' standards and aspirations.

Apart from the *guillotine*, as will be discussed in the article on Control Law below, by summer of 2021, the procedural rules are going to be largely revised to introduce brand new procedures, risk assessment and risk grades for the companies triggering their regulatory burden, many inspections and the introduction of dozens of new instruments of public control and supervision. This will make it more diverse, yet at the same time comprehensive, and providing an abundance of customization options for businesses.

The new regulatory sandboxes (as discussed below) will provide a possibility to carve out many regulatory requirements to the innovative areas of business implemented in the PPP-model projects, thus making projects separate jurisdictions, which can ignore certain existing pieces of legislation, or creating new ones, allowing project products to be allowed, without amendments to the Federal Laws and regulations.

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<sup>1</sup>Item 3 (b), list of instructions of the President of the Russian Federation No. PR-294 dated February 25th, 2019; Regulatory guillotine roadmap, adopted by the Government of the Russian Federation, Decree No. 4714p-P36 dated May 29th, 2019.

<sup>2</sup> Decree of the Government of the Russian Federation No. 7 dated January 13th, 2020

These above are brand new legislation incentives, which have not yet all come into force, as of today. But let us not forget the other regulatory trends which are otherwise influencing business. In order to combat illicit trafficking of industrial products, protect legal businesses and consumers, more and more goods are becoming a part of the labeling and traceability system<sup>3</sup>, placing some additional requirements for running a business.

Last, but definitely but not least, the vast changes are happening at the always-

more-important level of the Eurasian Economic Union, where we may observe a systematic movement towards a unified regulation. This paper, for instance, contains an article on the new alcohol regulation, which will be uniformly regulated in the EAEU countries. But many other areas of regulation will become uniformly regulated: for instance the 2016 GMP rules for clinical trials<sup>4</sup>, allowing for mutual recognition of the clinical trials of the medicine, conducted in one of the EAEU countries, which are expected to be widely used in the few coming years.

*For all those reasons, we have decided to launch this regulatory legal guide, in order to accumulate and present to you all the most interesting, controversial and resonant legal acts and decisions in the sphere of administrative regulation, as well as to shed light, and our views, on the latest trends in the industries, so that, we hope, you have a chance to be aware of the recent progress of reforms and be able to inform your colleagues, and clients, about the new prospects in this regard.*

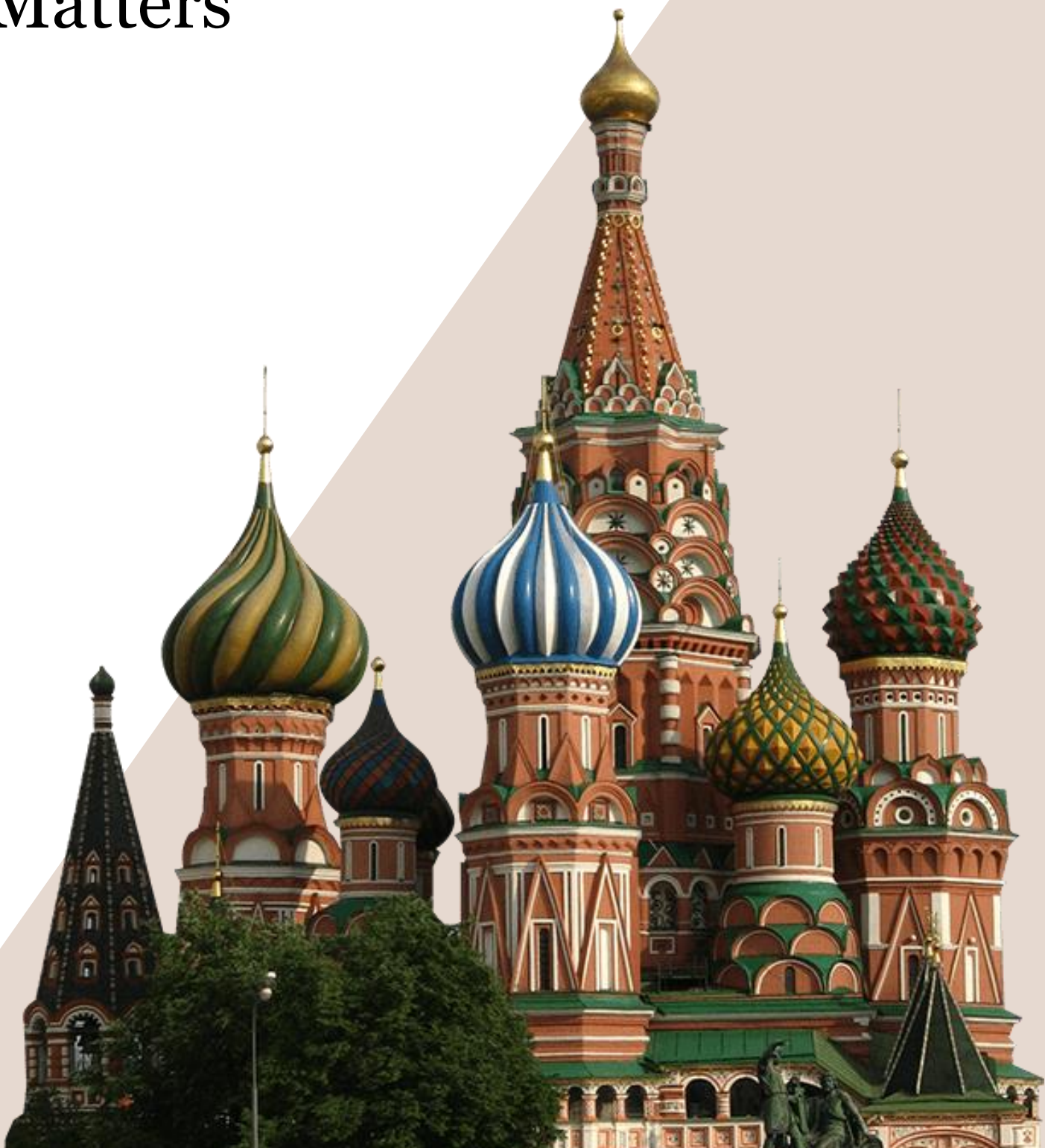
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<sup>3</sup> Decree of the Government of the Russian Federation No. 515 dated April 26th, 2019 "On the system of labeling goods by means of identification and traceability of goods movement"

<sup>4</sup> Decision of the Council of the Eurasian Economic Commission No. 77 dated November 3rd, 2016 "On approval of the Rules of Good Manufacturing Practice in the Eurasian Economic Union "



# General Regulatory Matters



## Drastic Reduction of Regulatory Requirements. How does it affect businesses?

On July 31st, 2020 the President of Russia enacted two bills – Federal Law dated July 31st, 2020 No. 247-FZ “On Mandatory Requirements in the Russian Federation” (“Requirements Law”) and Federal Law dated July 31st, 2020 No. 248-FZ “On State Control (Supervision) and Municipal Control in the Russian Federation” (“Control Law”). The new clauses of the Requirements Law come into force on November 1st, 2020 while those of the Control Law will come into force on July 1st, 2021<sup>5</sup>.

The Requirements Law heralds that the massive range of legal acts, stipulating mandatory requirements, are subject to analysis and revision. This is known as the ‘**regulatory guillotine**’. In contrast, the Control Law is aimed at shifting the focus from conducting inspections to preventing violations and giving companies and individual entrepreneurs more guarantees, when interacting with authorities. Thus, the newly-adopted laws are expected to build a regulatory basis of both procedural and material issues, indicating a consistent approach to the reform.

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<sup>5</sup> Please note these terms are general and some rules will be effective from the date specifically stated in the Requirements Law and Control Law.

# 1. Requirements Law

## What remains?

The Requirements Law provides for the main idea that mainly federal laws shall establish mandatory requirements in the coming years. These will assist the elimination of a great deal of outdated laws, relating to conducting business activities in different areas. Provided there are certain exceptions<sup>6</sup>, it is supposed the Government of the Russian Federation (“**Government**”) will cancel a number of the outdated legal acts by January 1st, 2021 which were adopted through the decades by the Government itself, federal executive bodies and the state bodies of the RSFSR and of the USSR. We see that, starting from the middle of August, the Government has already terminated and updated a massive number of legal acts (estimated as 81% of all those planned to be cancelled) in different spheres, including forestry, construction, industrial safety, and the same is expected for other industries subject to the reform. In addition, the Ministry of Economic Development has recently published some draft laws proposing a more detailed mechanism for revising mandatory requirements for business, whereas State agencies are elaborating the rules of control and supervision<sup>7</sup>. Paying attention to the fact that the Requirements Law details a broad

definition of the mandatory requirements to be assessed during State (or municipal) control, it shall be noted that those regulations, without such requirements, are out of the scope of the regulatory guillotine and remain unchanged.

The specific rules of application of legal acts remaining in force, assessments of compliance with them, and the possible related liability, are also covered in the Requirements Law. Despite the fact that a certain old act, with mandatory requirements, is still effective, the supervising bodies are not allowed to use it provided it entered into force before January 1st, 2020. Similarly, the administrative responsibility for non-compliance with such regulations no longer in force. In spite of the above mentioned, the Government is entitled to make a list of legal acts, which shall be observed nonetheless.

It is supposed, that the levels of setting forth mandatory requirements (apart from federal laws) are the EAEU law, international treaties of direct force of the Russian Federation, federal, regional and municipal legal acts. From the practical point of view, it means that some executive State authorities will be deprived of the right to enact acts, consisting of mandatory requirements,

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<sup>6</sup> The exceptions are related to the legal acts in the electricity and public-private partnership sectors.

<sup>7</sup> For instance, the Regulation On State Quarantine Phytosanitary Control (Supervision) is already published.



without expressly-vested powers. Meanwhile, there is still an opportunity, in certain cases, to set forth mandatory requirements in some subordinate legal acts. This carries the risks of creation of unsystematic and uncontrolled requirements.

## Duration

Generally, the term of entry into force of acts, containing mandatory requirements, will start either from March 1st or September 1st of the corresponding year as the act itself prescribes, but not earlier than 90 days after the day of their official publication. At the same time, one of the main notions of the Requirements Law is that the period of validity of laws, with mandatory requirements, is no more than 6 years (with the possible prolongation, based on the results of the assessment). In addition, the legal acts will be subject to legal expertise and assessment of actual and regulatory impact. All these implemented procedures are aimed to assist businesses in preparation for newly-adopted regulations, as well as to keep laws up-to-date, especially those covering rapidly-developing areas of technology.

## Mandatory requirements: how to comply?

Under the Requirements Law, mandatory requirements shall be observed according to a number of essential principles governing both their establishment and assessment of application.

They stipulate the basis of implementation and use of mandatory requirements, which include:

- A. minimization of risk of their selective application;
- B. avoidance of duplication of mandatory requirements and contradictions between them;
- C. proper publication of legal acts to make the persons, whose activities are subject to regulation, aware of mandatory requirements.

In addition, observation of mandatory requirements will be simplified, by virtue of their official clarifications, published by public authorities, that is believed will contribute to the uniformity of application. Anyway, in case there are 2 different mandatory requirements in relation to the same object and subject matter of regulation, then a person is considered bona fide, and is not subject to prosecution, if he/she has ensured compliance with at least one of these requirements.

## How to monitor changes?

Any person who is obliged to comply with certain mandatory requirements will be able to track them in a specifically-created register containing the legal acts with such requirements. The Requirements Law prescribes the start of register development to be March 1st, 2021. However, the date of work's finish is not specified, so there is the only option – to follow the developments.

## Experimental regimes

Creation of experimental legal regimes in which mandatory requirements can be waived, in whole or in part, by a certain group of persons is expected to have a positive impact on business and the administrative environment. The order of implementation will be determined by a special law.

### Areas not covered

In the meantime, a number of effective legal acts (and the relevant relations subject to them) are out of the scope of the Requirements Law. That is due to the fact they may not stipulate the mandatory requirements, as defined in the Requirements Law, or they are of a specific significance for the State.

## 2. Control Law

### Shift of emphasis

The distinctive feature of the Control Law is that control and supervisory measures are supplanted by the preventive ones. The purpose is to reduce the risk of harm (damage) caused by business activities. It is declared that control shall be carried out only in case of insufficiency and (or) ineffectiveness of non-State forms of ensuring compliance with mandatory requirements.

### Risk-oriented approach

In the event that control measures are nevertheless decided to be carried out, selection of a certain measure is based on assessment of the risks of causing harm – ‘risk-oriented approach’. Those that are the most serious and time-consuming for the person under control (on-site inspection, unscheduled monitoring procurement, raid inspection and unscheduled inspection visit) are to be conducted only upon receiving permission of the prosecutor.

### Terms of control and supervision

After implementation of the Control Law, it is expected that the timing of inspections will be reduced. The total period for documentary and on-site inspection will not exceed 10 working days (in contrast to 20 days now). The frequency of planned measures shall be established, depending on the risk category of the facility,

and is fixed in the regulation on State and municipal control separately. Please note that, on the facilities assessed as being of low risk, the planned measures are not conducted.

### How to avoid planned control and supervision?

There are the following options:

- A. Generally, by initiating an independent assessment of compliance with the mandatory requirements, carried out by an accredited organization;
- B. Through monitoring of information about objects of control. Controlled persons, who are under monitoring, are exempted from planned control and supervisory activities, provided that they meet certain requirements, that will be established by the laws on the type of control. Additionally, we assume this option may be useful while conducting legal due diligence;
- C. Through the control of the self-regulatory organization, if a controlled person is a voluntary member, provided that certain conditions are observed;
- D. By contracting an insurance of risks of causing harm (damage) agreement (this option shall be specified in the federal law additionally).

## Guarantees to persons under control

In general, the Control Law stipulates rights and obligations of participants of control and supervisory activities, as well as the detailed procedure of the activities to be performed in certain procedural forms. This is intended to create a system of guarantees, preventing any kind of violation and unjustified interference in business activities.

Accordingly, an inspector, and other participants of the mentioned activities, must have a procedural justification to exercise his/her authority and the ground for jurisdiction.

The persons under control are allowed to claim compensation for harm caused during the implementation of control and supervision, as well as to claim recognition of the results of control and supervision activities to be invalid in case of gross violations (which are expressly listed in the Control Law) in an administrative, or judicial order.

Apart from that, the persons shall, prior to recourse to a court, initiate pre-trial complaint proceedings against actions (omissions), and decisions of officials of control and supervisory bodies, to defend interests of those persons.

In addition, while being inspected, they are entitled to involve a business rights commissioner, who will assist in enforcement of rights and interests of the person under control.

## Digitalization

- Creation of registers on:
  - i. types of control;
  - ii. opinions on compliance of authorized officials;
  - iii. control and supervisory activities.
- Creation of information systems:
  - i. allowing to challenge the decisions and actions of supervision bodies, in a pre-trial procedure (before applying to the court);
  - ii. collecting all necessary information on control and supervision activities carried out by the respective authorities.

The additional guarantee, for the persons under supervision, states that: in case there is no information about an action, nor event in the latter system, such events (or actions) have no legal effect and the inspector will not be allowed to enter facilities of such a person.

- The document exchange will be carried out in electronic form (through the portal of State services, in Russian: Gosuslugi) using electronic signatures<sup>8</sup>. However, in the absence of technical possibility, some entities are entitled not to re-organize their workflow, for a certain period of time.

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<sup>8</sup> Please note such signatures are subject to special regulation in Russia and do not constitute an exchange of copies of signed documents.

- A number of control and supervision activities will be remote, without interaction with controlled persons. Accordingly, an inspection visit and on-site inspection will be performed via audio, or video, communication.

### Out of the scope

The Control Law provisions does **not** apply, in particular, to:

- i. tax, currency, customs, financial control; control over credit institutions and banking groups;
- ii. control over observance of legislation on joint-stock companies and securities, nor in the field of corporate relations in joint-stock companies;
- iii. public procurement and procurement under the Federal Law No. 223-FZ;
- iv. state defense order;
- v. AML/ CFT;
- vi. compliance with antitrust legislation.

In this regard, the experts state such exceptions “kill” the idea of limiting abuse of powers during control procedures and, as a result, the main inspections of business remain outside the guarantees of Control Law.

It should also be noted that the Requirements Law, as well as Control Law, refer to many unelaborated laws and regulations which shall clarify certain procedures and rules of conducting control and supervision activities.

Additionally, despite the fact that the main points, raising concerns among players of the market, have been excluded from the final drafts, some disputable provisions remain and the question is how these affect businesses in practice. In the light of the above, we will be tracing all developments on this issue and provide updates with key information in the next volumes of the Regulatory Guide.





### 3. Experimental legal regimes in the Russian Federation

As of the current date, the federal legal framework on regulatory sandboxes (so-called “experimental legal regimes” under Russian law) is still under development. However, the main Law on Experimental Legal Regimes has been already adopted by the Russian Government on July 31st, 2020, coming into force on January 28th, 2021.

The Law on Experimental Legal Regimes defines the procedure for initiating, establishing, implementing, monitoring and evaluating the effectiveness of experimental legal regimes, as a special regulation in the field of digital innovations with respect to certain fields, which includes financial markets as well <sup>9</sup>. Recently, the Government adopted the list of such technologies applied for innovations, which covers neurotechnology and artificial intelligence, big data, quantum and manufacturing technology, robotics and sensorics, blockchain systems, wireless communication, VR and AR, IoT, as well as industry-digital technologies. The establishment of an experimental legal regime is allowed if following conditions are simultaneously complied with:

- A. there is no general regulation, nor existing regulation, which does not allow for introduction of digital innovations, or significantly complicates such introduction;
- B. introduction of digital innovations, in this area, may lead to the achievement of one of the following results:
  - i. appearance of new types, or forms of carrying out, of economic activities;
  - ii. competition development;
  - iii. increase of State, or municipal, administration efficiency;
  - iv. increase in the quantity, quality or accessibility, with respect to certain goods, or services;
  - v. increase of investments;
  - vi. ensuring development of science and social sphere;
  - vii. improvement of general regulation, based on the results of the regime implementation;

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<sup>9</sup> The list of technologies applied for financial market shall be adopted additionally by the CBR (Russian Central Bank) in the near future.

viii. creation of favorable conditions for development and implementation of digital innovation.

C. digital innovations can be applied, or can be applied with due technical and organizational preparations;

D. initiative for the introduction of experimental legal regime includes risk assessment.

Such regimes cannot be established for the spheres, where they may lead to a high level of risk to the pivotal interests of individuals, society and government, including the matters of State secrecy, or the security of critical informational infrastructure, as well as the possibility that the goods, or services, restricted in, or prohibited for circulation, will be released into the market. (Therefore, if the circulation of cryptocurrency will be prohibited earlier than this draft is adopted, they cannot be allowed within such experimental legal regime).

A proposal to establish an experimental legal regime can be submitted by the regulator of relevant sphere, or by a possible applicant. The terms of the experimental legal regime are established by the program of experimental legal regime, which is approved by an act of the Russian Government or, in case of FinTech project, by the CBR (Russian Central Bank). As of the current date, some procedural initiatives have been published and are in the elaboration process.

To apply for the residency in the Experimental Legal Regime, the entity applies to the relevant regulator with an application, which confirms their compliance with the terms of such Experimental Legal Regime, as well as certain additional requirements, such as the absence of arrears in respect of taxes and charges, history of administrative liabilities, etc.



Energy, Natural Resources,  
Infrastructure and  
Environment Protection



## 4. Agreement on Protection and Stimulation of Investments – New Type of Investment Incentive Agreement

On April 1st, 2020 a Law “On protection and stimulation of investments in the Russian Federation” (“**Investment Law**”) came into force. Below, please find a brief summary of the main provisions of this law.

### Who can be an investor under the Investment Law?

The protection, under the new Investment Law, is afforded to Russian companies that conclude an investment protection and stimulation agreement (“**Investment Agreement**”) with Russian Federation, or its constituent bodies, before January 1st, 2030.

An organization that implements the investment project (“**Investor**”) has to be a Russian company and cannot be a State, nor municipal organization, nor State / municipal unitary organization.

### What are the requirements to the investment?

The Investment Agreement can be concluded only with respect to “*new investment projects*”. The project is considered new if it is an investment project, in which capital expenditures were approved by the investor:

- A. between May 7th, 2018 and April 1st, 2020 and the application for conclusion of an Investment Agreement was submitted before December 31st, 2021;
- B. after April 1st, 2020 and the application for conclusion of an Investment Agreement was submitted within a year from the moment of such approval.

The Investment Agreement may be implemented for any business industry, with the exception of:

- A. gambling business;
- B. production of tobacco products, alcohol products, liquid fuels;
- C. production of crude oil and natural gas, including associated petroleum gas;
- D. wholesale and retail trade;
- E. activities of financial organizations;



- F. construction (modernization, reconstruction) of administrative and business centers and shopping centers (complexes), as well as residential buildings.

## How can an Investment Agreement be concluded?

The Investment Law introduces two ways to conclude an Investment Agreement:

- A. **Private initiative** – An Investor may submit an application to conclude an Investment Agreement (the electronic form of filing is envisaged but, for the first year of validity of the Investment Law, it remains inapplicable,).
- B. **Public initiative** – If a federal, or regional, public authority decides that an implementation of an investment project is more cost-effective with the participation of an investor, then such public authority can issue a declaration of investment project implementation. The Investor for such project is determined through a competitive process, based on the amount of proposed investment, the volume of required State support and the timeframes of the implementation of the project, contained in the relevant bid.

Please note that an Investment Agreement not involving the Russian Federation, or involving a municipal entity, may be concluded only after April 1st, 2021. In October, 2020, the Government approved the rules of conclusion of the Investment Agreement, which provide for a list of documents required for its preparation, standard form, as well as details regarding amendment and termination.

## What preferences are granted to investors?

**Stabilization clause** – ensures non-application of some of the amendments to the applicable legislation, adversely affecting an investment project.

Amount of Investment	Public Party of the Investment Agreement	Application of which acts, adversely affecting an investment, can be avoided by stabilization
between RUB 200,000,000 and RUB 1,000,000,000	Regional public authorities (except for the cities of Moscow and Saint-Petersburg)	Acts (decisions): <ul style="list-style-type: none"> <li>• canceling the grounds for the emergence of rights to land plots</li> </ul>
exceeds RUB 200,000,000	Government of cities of Moscow	



Amount of Investment	Public Party of the Investment Agreement	Application of which acts, adversely affecting an investment, can be avoided by stabilization
	and Saint-Petersburg	provided from lands in State, or municipal, ownership;
exceeds RUB 250,000,000 in the spheres of healthcare, education, culture and sport	Russian Federation	<ul style="list-style-type: none"> <li>• changing the procedure for granting rights and determining the sale price of a State, or municipal, land plot;</li> <li>• changing the procedure for determining the amount of rent;</li> </ul>
exceeds RUB 500,000,000 in the spheres of digital economy, ecology, agriculture		<ul style="list-style-type: none"> <li>• establishing additional obligations and reducing the amount of rights of land owners, land users, landowners and tenants of land when using land;</li> </ul>
exceeds RUB 1,500,000,000 in the spheres of manufacturing		<ul style="list-style-type: none"> <li>• establishing other additional requirements for land use and development of territories;</li> </ul>
exceeds RUB 5,000,000,000 in the other economy sectors		<ul style="list-style-type: none"> <li>• establishing additional administrative procedures when performing engineering surveys, architectural and construction design, construction, reconstruction, commissioning, demolition of capital construction objects, and (or) changing the procedure for carrying out such procedures;</li> <li>• changing the procedure for preparing territorial planning documents, urban planning regulations, territory planning documentation;</li> </ul>

Amount of Investment	Public Party of the Investment Agreement	Application of which acts, adversely affecting an investment, can be avoided by stabilization
exceeds RUB 10,000,000,000		<p>In addition to the line above, the following shall <b>not</b> apply:</p> <ul style="list-style-type: none"> <li>• acts providing for an increase in the rates of export customs duties and environmental payments.</li> </ul>

The term of a stabilization clause cannot exceed:

- i. 6 years: for investments not exceeding RUB 5,000,000,000
- ii. 15 years: for investments in an amount between RUB 5,000,000,000 and RUB 10,000,000,000
- iii. 20 years: for an investment exceeding RUB 10,000,000,000

An Investment Agreement for the amount exceeding RUB 300,000,000 may contain an obligation of the Russian Federation, or its constituent body, to ensure non-deterioration of the financial benchmarks, of the investment project, through implementation of another public investment project.

In case of violation of the stabilization clause, the Investor has the right to demand compensation for the proven damage caused by the public counterparty.

In addition, paragraph 4.3 Article 5 of Russian Tax Code now also provides a stabilization clause for some of the tax payments, depending on the amount of investment and parties of the Investment Agreement.

**State support measures** – The State can provide support measures to an investor, in the form of recovery of expenses for the construction of related infrastructure (up to 100%), or payment of credit / loan interest (up to 50%). The procedure for granting State support measures has been already implemented by the Government, stipulating that recovery of expenses is to take from 5 to 11 years, depending on type of infrastructure facility and terms of the specific agreement.

## How are disputes resolved?

The Investment Law provides that the parties, to the Investment Agreement, must resolve all disputes, arising in connection with the agreement, through negotiations. To do this, one of the parties must notify the other side of the existence of the claim, which the parties must resolve within three months.

If it is impossible to resolve the dispute through negotiations, the dispute may be referred to a Russian court, or to arbitration with its location in the Russian Federation.

## State information system

The State information system "Investments" should be created, which will contain information regarding:

- investment projects,
- measures of State (municipal) support,
- declarations on the implementation of investment projects,
- investment agreements and related contracts,
- amounts of taxes, calculated for payment in connection with the implementation of investment projects,

The amount of import customs duties; other information determined by the Government of the Russian Federation, paid in connection with the implementation of investment projects.



## 5. Perspective of a New Approach to the Environmental Law Violation

At the end of May, 2020, a collapse of a fuel tank was reported at the heat and power plant near Norilsk, Siberia. The heat and power plant is owned by JSC "Mining and Metallurgical Company "NORILSK NICKEL" subsidiary ("**Nornickel**"). More than 21 thousand tons of fuel were spilt into nearby waters, causing a fire covering an area of 300 square meters. According to preliminary estimates, it will take at least six months to collect the fuel, whereas the nature in Norilsk will take at least ten years to restore.

The main point, in this case, is what penalty the Federal Service for Supervision of Natural Resources ("**Rosprirodnadzor**") imposes on Nornikel for environmental law violation. Rosprirodnadzor estimated the amount of environmental damage from the fuel spill and imposed a fine of RUB 147.78 billion (approx. USD 2 billion), including damage caused to waters and soil, which may become the largest fine in Russian practice.

On September 10th, it became known that Rosprirodnadzor had filed a lawsuit against Norilsk Nickel to recover the fine in the amount RUB 147,784.627,500. As of the current date, the proceedings are postponed until November 24th, 2020.

Previously, as a rule, the violations of Russian administrative legislation provisions, in terms of environmental protection, resulted in penalties, which were not burdensome and did not seriously affect businesses and their assets. As a result, Russian market practice shows that companies favor an idea to pay the respective fines, as they are significantly lower than cost of activities needed to bring business operations in line with the current environment protection legal requirements.

We believe imposing heavy fines for violations of environmental legislation may become a new procedure for Rosprirodnadzor. The new precedent with Nornickel shows that the State authority has a more serious and responsible approach to the issue of prosecution. This is also confirmed by the fact that Rosprirodnadzor filed a lawsuit with the court, since Nornickel had previously expressed disagreement with the methods of its calculating. In the light of the above, we recommend that companies, operating in the Russian market, take this circumstance into account and do not neglect the legal requirements imposed on them, in order to comply with the applicable laws and avoid heavy fines.

## 6. New Oil Spill Regulation

In July 2020, amendments were made to the Federal Law "On Environmental Protection" No. 7-FZ dated January 10th, 2002, providing for the introduction of a new mechanism for the prevention and elimination of oil, and oil product, spills on land. The amendments come into force from January 1st, 2021 and contain external regulations for oil companies.

The principal positions of the new Law are the following:

- A. The companies operating in the oil-producing industry are obliged to draw up plans in case of an emergency, similar to the accident at TPP-3 at Norilsk. The plans should be approved by January 1st, 2024.
- B. As a matter of course, it will be necessary to have sufficient financial security to eliminate accidents. In the capacity of financial security, there could be a bank guarantee, an insurance contract, a document that confirms the creation of a reserve fund, etc.
- C. Oil companies should carry out work on localization and liquidation of spills by either their own emergency services, or contracted ones. If it is not possible to eliminate the consequences of an accident, they should contact the authorized bodies to attract additional forces.
- D. Moreover, the companies should carry out reclamation and other restoration work, pay in full damages caused to the environment, life, health and property of citizens and legal entities, and compensate for expenses for attracting additional forces.

As a separate note, it should be mentioned that the Law's scope of application does not cover the seas and oceans. Accidents occurring in the seas and oceans are the subject of regulation under the previous Federal Law "On internal sea waters, territorial sea and contiguous zone of the Russian Federation" No. 155-FZ dated July 31st, 1998, and Federal Law "On the continental shelf of the Russian Federation" No. 187-FZ dated November 30th, 1995.

We believe the new mechanism would be effective and provide a well-timed set of rules, taking into account the interests of both business and the State.



# Food and Beverages



## 7. New Regulations on Nicotine-Containing Products

The Federal Law dated July 31st, 2020, "On Amending Certain Laws of the Russian Federation on the Protection of Citizens' Health from the Consequences of the Consumption of Nicotine-Containing Products" ("**Law**"), was approved by Russian Parliament.

### Background

The main goal of the Law is to limit the sale and consumption of nicotine-containing products, including alternatives to tobacco products, and devices for their use. Before passing this Law, there were quite strict restrictions on tobacco products, but alternatives to tobacco products were outside of any regulations. This situation triggered the necessity to pass a specific law. The first draft version of the Law was prepared in 2017. However, due to the need to amend it, its passing was set aside. In 2019, the work on the Law was resumed and at the end of June, 2020, the Law was approved by the Russian Parliament.

### Important definitions

The Law introduces important new definitions: nicotine-containing products, devices for consumption of nicotine, nicotine-containing liquid, hookah, consumption of tobacco, tobacco organizations, sponsorship of tobacco and nicotine-containing products. For instance, nicotine-containing products are defined as "*products containing nicotine (including those produced by synthesis) or its derivatives, including*

*nicotine salts, are intended for consumption of nicotine and its delivery by sucking, chewing, sniffing or inhaling, including products with heated tobacco, solutions, liquids or gels containing at least 0,1 mg/ml liquid nicotine, nicotine-containing liquid, powders, mixtures for sucking, chewing, sniffing, and are not intended for use in food (except for medical products and medicines registered in accordance with the legislation of the Russian Federation, food products containing nicotine in natural form, and tobacco products*".

### Key provisions

#### A. Consumption

The ban on consumption of nicotine-containing products, in public places, is introduced in the Law. Other current limitations for consumption of tobacco products are also extended to nicotine-containing products.

#### B. Sale

Online sale of nicotine-containing products is prohibited. In-store sale of nicotine-containing products is limited by the current bans, imposed on the sale of tobacco products, including

labeling requirements and limitations to display of such products as described below. Moreover, there are specific prohibitions on the sale of some nicotine products:

- i. Wholesale and retail sale of food nicotine products, as well as nicotine products designed for chewing, sucking, sniffing is prohibited.
- ii. Retail sale of nicotine (including synthesized nicotine) or its derivatives, including nicotine salts, as well as nicotine-containing liquids and nicotine solutions (including liquids for electronic-nicotine delivery systems) is prohibited, if the concentration of nicotine in the nicotine-containing liquid, or nicotine solution, exceeds 20 mg/ml.

### **C. Display**

The open display of nicotine-containing products is prohibited. Only a black-and-white alphabetical list of nicotine-containing products

can be displayed in stores. The nicotine-containing products can be demonstrated to consumers upon their request. These restrictions are not applied to devices for consumption of nicotine, nor hookahs.

### **D. Advertising and stimulation**

The Law prohibits all forms of advertising, promotion and sponsorship of nicotine-containing products. The advertising of smoking accessories, devices for consumption of nicotine and hookahs is also prohibited. However, certain forms of stimulation of sale of these products are allowed (e.g. sponsorship and discounts for consumers).

### **Key dates**

The Law comes into force on the date of its publication. However, certain important bans, including the ban on advertising, display and sale, come into force *180 days after the day of its publication*.

## 8. New Regulations on Alcohol

On January 1st, 2022, the new EAEU TR 047/2018 "On the safety of alcoholic beverages" ("**TR on Alcohol**") comes into force.

### Background

The main aim of TR on Alcohol is to eliminate the double regulation (at the EAEU level and at the national level) that currently exists. TR on Alcohol imposes uniform requirements for sale, production, packaging, marking, storage, transportation, realization and utilization of alcoholic beverages, valid in all EAEU member states (Russian Federation, Belarus, Kazakhstan, Kyrgyzstan, and Armenia).

### Transition period

Persons who have obtained declarations and certificates of conformity for the products, in the period prior to the entry into force of this technical regulation, may carry out activities until the expiration of the declaration/certificate and do not have to bring their activities in line with the new requirements. However, regardless of the expiration date of the declaration/certificate, obtained before the entry into force of the new regulation, after January 9th, 2024, the validity of previously-obtained documents ceases and it is necessary to obtain new documents.

### Key provisions

#### A. Definitions

Several new definitions are introduced by TR on Alcohol. This includes

definitions of alcohol products, wine products, brewing products (beers), honey-based beverages (meads), low alcoholic beverages, etc. Moreover, there are definitions of certain alcoholic beverages, with detailed descriptions of their characteristics. For instance, there are definitions of vodka, wine, beer, liqueur, gin, whisky, rum, cider, brandy, etc. Some other notions such as "producer", "importer", "seller", "person authorized by producer", "geographical indication", "appellation of origin of alcoholic beverages", "consumer characteristics of alcoholic beverages", etc. are also defined.

#### B. Composition

Special rules on the content of certain food additives, biologically-active substances, colorants, stabilizers, emulsifiers, fillers and thickeners will be set out for different types of alcoholic beverages.

#### C. Identification

Alcoholic beverages should be identified as prescribed in the TR "On Safety Of Food Products" (TR CU 021/2011).

#### D. Safety

Alcoholic beverages should be safe for consumers. There are several requirements that are obligatory,

in order to comply with safety requirements (e.g. components that are not listed in the relevant documents are not allowed and shall not be used in alcoholic beverages).

#### **E. Packaging**

Alcoholic beverages should be in the package that ensures its safety and preserves the consumer qualities. Specific requirements are also prescribed by Technical Regulations TR CU 005/2011 "On Packaging Safety" that must be fulfilled.

#### **F. Labeling**

Alcoholic beverages shall be marked with the specific visual and textual signs, obligatory for selling alcoholic beverages in the EAEU. Moreover, alcoholic beverages shall contain information that is obligatory, according to TR CU 021/2011 "Food Products with regard to the Labeling".

TR on Alcohol does **not** apply to certain alcohol products, which are:

- i. intended for transit through the territories of the EAEU member states;
- ii. produced for scientific purposes;
- iii. produced by individuals for personal use;
- iv. exported under trade agreements outside the territories of the EAEU member states;
- v. contain less than 0,5% of ethyl alcohol.



## 9. Seed Farming Regulation to be Revisited?

According to official information, a draft law "On seed farming" ("**New Seed Law**" or "**NSL**") is being considered by the Government of the Russian Federation ("**Government**"). At the end of June, 2020, Russian media reported that the updated text of the NSL had passed all approval procedures in the Government and the Ministry of Agriculture of the Russian Federation ("**Ministry**") is planning to forward the NSL to the State Duma of the Russian Federation, within a month, to launch its legislative process.

New Seed Law is to replace current Federal Law dated December 17th, 1997 No. 149 "On the seed farming". The initiative to amend the current rules emanates from the Government.

Generally, the declared purpose of revision is to eliminate redundant and duplicated functions, as well as some of the existing administrative barriers in the industry. Officials assure those involved that adoption of the NSL should lead to improvement of the quality of domestic seed material, enhancement of regulatory framework and implementation of the base for a transparent seed market and breeders' intellectual rights' protection. In addition, it is emphasized that the NSL will help in addressing the problem of import dependence.

### Key changes in regulation

- A. In order to import seeds into Russia, it is required to obtain a genetic passport. In addition, NSL introduces the restriction on import of agricultural seeds into Russia from foreign states, without control over the places of cultivation and production (including processing) of seeds, which shall be carried out by authorized agricultural State bodies of Russia.
- B. The list of requirements for production of agricultural seeds has been expanded. Seed producers are required to keep records of information, *inter alia*, on (1) the place of origin of seeds, the place of cultivation, (2) the scheme for production of seeds of the plant variety, (3) the mass and quantity of seeds used for their own needs etc.
- C. The indicators of the quality of seeds and planting material have been clarified. Presence of genetically-modified organisms (GMOs) in the crops of agricultural plants shall be determined as well. Methods for determining varietal indicators of seed quality have also been changed: now they include approbation and variety identification.

- D. The NSL provides the list of information to be reflected in the State Register of Breeding Achievements Permitted for Use ("**Register**"). A state fee has been set for adding information in the Register.
- E. Prior to entering information into the Register, a number of tests and evaluations of agricultural plants varieties, or hybrids, are to be carried out to identify their economic trait. The necessary documents to file, as well as the test procedure, are expected to be established by the Government.
- F. It is envisaged that a federal state information system will be created for the seed production (GIS "Seed Farming"), which will serve as information and accumulative resource for all market participants and should ensure seeds' traceability procedure.

## Criticism

NSL is facing strong criticism from the Russian agricultural business community. Please find the main complaints and arguments below:

Experts criticize implementation of genetic passports, noting that the requirement for mandatory provision of such a document may lead to disputes between Russia and foreign countries since, for all members of International Union for the Protection of New Varieties of Plants (UPOV), only tests for distinctiveness, uniformity and stability are recognized as legitimate.

Another requirement that seems inadequate is the control of seeds in places of cultivation, not only in the Russian Federation, but also abroad. It is not clear how this procedure will be implemented from a practical point of view and at whose expense.

Maintaining the Register, as well as introducing the fee for entering information into it, is considered as unreasonable. It is believed that seed producers should have the right to independently decide whether, or not, to plant seeds which varietal and sowing qualities do not meet the proposed requirements for varietal and sowing quality indicators. It should be up to industry associations to establish and enforce the respective rules and restrictions, if needed.

The position regarding use of unknown seed material and GMOs is not clear, as there is no explicit restriction on this matter.

Functions of carrying out the analysis and seed examination are likely to be delegated to accredited laboratories. This process should not be monopolized by the government agencies.

To summarize, the New Seed Law expands the State's control over the agriculture industry and introduces a number of additional obligations and regulations. It does not seem to eliminate any industry barriers but may, instead, additionally complicate business activities of agricultural producers and importers.

## Prospects of adoption

We see that the work on drafting the NSL is still in progress. On the one hand, given the numerous negative experts' reviews and long development process (approximately starting from 2018) it is possible that that the New Seed Law will not be adopted in the current version, nor adopted at all. On the other hand, according to the information from public sources, the NSL is moving forward (with certain amendments mitigating the criticism) and there is clear will of Russian agricultural authorities to ensure its successful adoption.

In the light of the above, we will trace all developments with regard to NSL and provide updates with key information.



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