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Russia/Eurasia

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This article discusses significant international legal developments in corporate law, arbitration law, energy law, data privacy, and religious freedom in Russia, Kazakhstan, Belarus, and Ukraine.

I. Corporate Law

In 2016, Russian law underwent several changes aimed at modernizing its corporate legal framework and implementing the results of recent civil law reforms. The major changes related to (a) the transfer of participation interests in a limited liability company; (b) approving major and related-party transactions; (c) record-keeping regarding beneficial owners; (d) the so-called "Fourth Antimonopoly Package;" and (e) judicial case law.

A. TRANSFER OF PARTICIPATION INTERESTS IN AN LLC

The rules pertaining to transferring participation interests in a Russian LLC were revised to curb malicious corporate raiding.[1] First, as of January 1, 2016, a participation interest is deemed transferred when a corresponding entry is made in the public register, whereas previously, transfer occurred upon notarization of the transaction. This procedural change impacts the drafting of purchase agreements, particularly provisions allocating risks prior to transfer. Second, certain corporate actions became subject to public notary certification, including (1) resolutions to increase a company's charter capital; (2) a participant's notice to withdraw from a company; (3) an offer to sell a participation interest to a third party; and (4) a participant's request for a company to buy out its participation interest.

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1. Federal'nyi Zakon RF O Ynesenii Izmenenij v Otdel'nye Zakonodatel'nye Akty Rossijskoj Federacii [Federal Law of the Russian Federation on Amendments to Individual Legislative Acts of the Russian Federation], SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2015, No. 391-FZ, *available at* http://pravo.gov.ru/proxy/ips/?docbody=&nd=102386394&intelsearch=391-FZ+.

Third, the structure of option agreements for participation interests was clarified and improved. As of January 15, 2016, an option agreement for a participation interest may be exercised through a notarized irrevocable offer, which an offeree can subsequently accept through unilateral notarized acceptance. This limits the risk that the offeror changes its mind after granting the option but before the actual transfer.

B. Approval of Major and Related-Party Transactions

Effective January 1, 2017, new regulations for major and related-party transactions narrowed the scope of transactions subject to approval.[2] The definition of "major transactions" changed from a firm threshold of twenty-five percent of the corporate assets' book value to a more sophisticated criterion. Specifically, a transaction is now considered "major" and subject to approval if it both (1) results in the termination of the company's business or changes the type or scale of its business; and (2) exceeds twenty-five percent of the company's assets' book value.

With respect to related-party transactions, the new law abolished the requirement of prior approval by non-related participants and shifted the focus to reporting and subsequent control. In addition, whether a party is "related" to a transaction will no longer require only a twenty percent or more "affiliation" with the relevant company.[3] Instead, the new rules require "control" of the relevant company, defined as controlling more than fifty percent of the governing body's votes and appointing the sole executive body and/or more than fifty percent of the collective management body.[4] In practical terms, this significantly decreases the number of related-party

2. Federal'nyi Zakon RF O Vnesenii Uzmeneniy v Federal'nyy Zakon RF "Ob Aktsionernykh Obshchestvakh" i Federal'nyy Zakon "Ob Obshchestvakh s Ogranichennoy Otvetstvennost'yu" v Chasti Regulirovaniya Krupnykh Sdelok i Sdelok, v Sovershenii Kotorykh Imeyetsya Zainteresovannost' [Federal Law of the Russian Federation on Amendments to the Federal Law on Joint Stock Companies and Federal Law on Limited Liability Companies as Related to Major and Related-Party Transactions], Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF] [Russian Federation Collection of Legislation] 2016, No. 343-FZ, *available at* http://pravo.gov.ru/proxy/ips/?docbody=&nd=102404843&intelsearch=343-FZ+.

3. Other criteria also applied in the former law. *See, e.g.*, Zakon O Konkurentsii i Ogranichenii Monopolisticheskoy Deyatel'nosti na Tovarnykh Rynkakh [Law on Competition and Restriction of Monopoly Activity on Commodity Markets], Vedomosti S'ezda Narodnykh Deputatov RSFSR I Verkhovnogo Soveta RSFSE [Ved. RSFSR] [Bulletin of the Congress of People's Deputies of the Russian Soviet Federal Socialist Republic and Supreme Council of the RSFSR], 1991, No. 948-1, Art. 4.

4. Federal'nyi Zakon RF O Vnesenii Izmeneniy v Federal'nyi Zakon RF "Ob Aktsionernykh Obshchestvakh" i Federal'nyi Zakon "Ob Obshchestvakh s Ogranichennoy Otvetstvennost'yu" v Chasti Regulirovaniya Krupnykh Sdelok i Sdelok, v Sovershenii Kotorykh Imeyetsya Zainteresovannost' [Federal Law of the Russian Federation on Amendments to the Federal Law on Joint Stock Companies and Federal Law on Limited Liability Companies as Related to Major and Related-Party Transactions], Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF] [Russian Federation Collection of Legislation] 2016, No. 343-FZ (this requirement reflects an amendment to Federal Law of the Russian Confederation on Joint Stock Companies, 1995, No. 208-FZ, Art. 81, which required only twenty percent for control).

transactions subject to pre-approval. Further, the law now requires companies to notify their boards or shareholders of a contemplated related-party transaction at least fifteen days in advance.

The rules for challenging major transactions and related-party transactions were also amended. To bring a claim, a shareholder (or group of shareholders) must hold no less than one percent of the company's share capital. Practitioners view this change as a limitation on minority shareholders' rights, since there was no such threshold before.

C. Records of Beneficial Owners

As of December 21, 2016, Russian companies are required to identify and keep records on their beneficial owners.[5] A beneficial owner is defined as a person who ultimately owns, either directly or indirectly, a participation interest of more than twenty-five percent of an organization's share capital, or is able to control its actions. Russian companies are now required to: (1) undertake all reasonable and available measures to obtain information on the company's beneficial owners, including the owners' complete names, citizenships, dates of birth, passport data, copies of immigration documents (if applicable), addresses, and taxpayer identification numbers; (2) update such information at least once a year; (3) retain such information for a minimum of 5 years;[6] and (4) provide supporting documents upon the request of relevant governmental authorities. This duty of identification is enforced through newly introduced penalties of up to RUB 500,000 (approximately $8,000 USD) for failure to comply.[7]

D. "Fourth Antimonopoly Package"

Another set of legal changes pertains to antimonopoly (antitrust) law. The so-called "Fourth Antimonopoly Package"[8] took effect on January 5, 2016.

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5. O Vnesenii Izmeneniy v Federal'nyi Zakon RF "O Protivodeystvii Legalizatsii (Otmyvaniyu) Dokhodov, Poluchennykh Prestupnym Putem, i Finansirovaniyu Terrorizma" i Kodeks Rossiyskoy Federatsii ob Administrativnykh Pravonarusheniyakh [Federal Law of the Russian Federation on Amendments to the Federal Law on Counteraction to Legalization (Laundering) of Criminal Proceeds and Financing of Terrorism and the Russian Federation Code of Administrative Offenses], Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF] [Russian Federation Collection of Legislation] 2016, No. 215-FZ, art. 1, *available at* http://pravo.gov.ru/proxy/ips/?docbody=&nd=102401391&intelsearch=215-FZ.

6. The law does not clarify whether this requires companies to retain the information for five years from the time they acquire it, or for five years after the relevant person is no longer a beneficial owner.

7. *Id.* at art. 2.

8. Federal'nyi Zakon RF O Vnesenii Izmeneniy v Federal'nyi Zakon "o Zashchite Konkurentsii" i Otdel'nyye Zakonodatel'nyye akty Rossiyskoy Federatsii [Federal Law of the Russian Federation on Amendments to Federal Law on Protection of Competition and Some Legislative Acts of the Russian Federation], Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF] [Russian Federation Collection of Legislation] 2015, No. 275-FZ, art. 6, *available at* http://pravo.gov.ru/proxy/ips/?docbody=&nd=102379622&intelsearch=275-FZ; *see*

Specifically, joint venture agreements between competitors are now subject to prior approval of the Federal Antimonopoly Service (FAS) if they meet standard merger control monetary thresholds. Also, merger control filings are meant to be more transparent, and, as such, the FAS is required to disclose on its official website certain information about transactions for which a request for approval has been submitted. Interested third parties now may submit statements relating to transactions under review and their impact on competition.

E. Further Case Law Developments

The positive legislative changes described above have been accompanied by valuable clarifications from the courts, a few of which are worthy of mention. In a seminal case, the Supreme Court of the Russian Federation confirmed for the first time that failure to vote in a manner agreed upon in a shareholders' agreement may result in contractual penalties.[9] Prior to this decision, it was unclear whether a court would enforce a monetary penalty for the breach of a contractual duty to vote or act in a particular way. In fact, this was one of the first times that the Supreme Court interpreted any of the new provisions for corporate agreements that were introduced in mid-2014. In another case, the Supreme Court allowed a company's ultimate beneficiaries (*i.e.*, those owning shares indirectly through a chain of foreign companies) to challenge corporate resolutions of the company's Russian subsidiaries in Russian national courts.[10] Previously, only direct shareholders could do so, which deprived ultimate beneficiaries of operational control over their subsidiaries.

II. Arbitration and Civil Procedure

A. Russia

Reforms to the Russian arbitration system were enacted by Federal Law No. 382-FZ "On Arbitration in the Russian Federation" (Law 382-FZ)[11] and the related Federal Law No. 409-FZ "On Amending Certain Legislative Acts of the Russian Federation" (Law 409-FZ).[12] These new laws have

also Corp. Couns. Guide to Int'l Antitrust § 11:9, Westlaw (database updated Nov. 2016) (identifies law as "Fourth Antimonopoly Package").

9. Postanovlenie Plenuma Verkhovnogo Suda Rossiiskoi Federatsii [Russian Federation Supreme Court Plenary Ruling on Economic Disputes], Verkhovnogo Suda Rossiiskoi Federatsii [Verkh. Sud RF], Oct. 3, 2016, No. 304-??16-11978, p. 2-3.

10. Postanovlenie Plenuma Verkhovnogo Suda Rossiiskoi Federatsii [Russian Federation Supreme Court Plenary Ruling on Economic Disputes], Verkhovnogo Suda Rossiiskoi Federatsii [Verkh. Sud RF], Mar. 31, 2016, No. 305-??15-14197, p. 7.

11. Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF] [Russian Federation Collection of Legislation] 2015, No. 382-FZ, *available at* http://pravo.gov.ru/proxy/ips/?docbody=&nd=102386393&intelsearch=382-FZ.

12. Federal'nyi Zakon RF O Vnesenii Izmeneniy v Otdel'nyye Zakonodatel'nyye akty Rossiyskoy Federatsii i Priznanii Utrativshim silu Punkta 3 Chasti 1 stat'i 6 Federal'nogo

significantly affected domestic and international arbitration in Russia. Law 382-FZ replaced the existing law on domestic arbitration,[13] while Law 409-FZ brought existing laws, including the Law on International Commercial Arbitration (ICA Law),[14] the Arbitrazh Procedural Code,[15] and the Civil Procedure Code,[16] into conformity with Law 382-FZ. The bulk of both laws took effect on September 1, 2016, with some provisions taking effect later.[17]

While updating the general arbitration framework, these reforms significantly impact the status of *ad hoc* arbitrations and streamline important issues pertaining to arbitrability of corporate disputes.

Under the previous version of the ICA Law, parties generally could refer the following types of disputes to international commercial arbitration:

(1) contractual or other civil law disputes arising from the parties' international economic activity, where at least one of the parties has a commercial enterprise abroad;
(2) disputes between enterprises with foreign investments, international associations, and organizations established in Russia; and
(3) disputes between the participants of the entities listed in (2) and other parties.

The updated ICA Law expands this list to include disputes where a substantial part of the obligations arising from the relationships between the parties is to be performed abroad, or where the subject matter of the dispute is most closely connected with a foreign state. It also extends the scope of disputes pertaining to international investment that may be made subject to international commercial arbitration.[18]

Aakona "O Samoreguliruyemykh Organizatsiyakh" v Svyazi s Prinyatiyem Federal'nogo Zakona "Ob Arbitrazhe (Treteyskom Tazbiratel'stve) v Rossiyskoy Federatsii" [Federal Law of the Russian Federation on Amendments to Certain Legislative Acts of the Russian Federation and Annulment of Paragraph 3 of Part 1 of Article 6 of the Federal Law on Self-Regulatory Organizations in Connection with the Adoption of the Federal Law on Arbitration in the Russian Confederation], SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2015, No. 409-FZ, *available at* http://pravo.gov.ru/proxy/ips/?docbody=&nd=102387173&intelsearch=409-FZ.

13. SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2015, No. 382-FZ, art. 53, *available at* http://pravo.gov.ru/proxy/ips/?docbody=nd=102386393&intelsearch=382-FZ.

14. *See* SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2015, No. 409-FZ, *supra* note 12, at art. 2, *available at* http://pravo.gov.ru/proxy/ips/?docbody=&nd=102387173&intelsearch=409-FZ.

15. *See id.* at art. 9.

16. *See id.* at art. 10.

17. SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2015, No. 382-FZ, art. 54; SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2015, No. 409-FZ, *supra* note 12, at art. 13.

18. SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2015, No. 409-FZ, *supra* note 12, at art. 2(3), (5); SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2015, No. 382-FZ, art. 44(18).

International arbitration institutions such as the International Commercial Arbitration Court (ICAC) and the Maritime Arbitration Commission (MAC) at the Chamber of Commerce and Industry of the Russian Federation may consider domestic disputes, but examination of such disputes will be governed by domestic arbitration law.[19]

Law 382-FZ introduces new rules for the creation and functioning of arbitration institutions. Such institutions may be created only under the auspices of non-commercial organizations and are required to obtain permission from the Russian Government,[20] although the law exempts the ICAC and the MAC from this requirement.[21] Arbitration awards rendered by arbitration institutions without permission will be treated as decisions made by an *ad hoc* arbitration.[22]

Ad hoc arbitrations are subject to a number of new limitations, including the following:

1. A party cannot waive its right to petition to a Russian court regarding the recusal of an arbitrator,[23] termination of an arbitrator due to inability to perform his or her duties,[24] a challenge to a jurisdictional ruling[25] or revocation of an award;[26]
2. Assistance from the Russian court in collecting evidence is not allowed;[27] and
3. *Ad hoc* arbitrations cannot decide corporate disputes.[28]

Importantly, corporate disputes may be considered only by institutional arbitration.[29] Law 409-FZ generally covers which corporate disputes are arbitrable[30] and identifies some corporate disputes that must meet additional requirements in order to become arbitrable.[31] Other specific types of corporate disputes cannot be subject to any arbitration, including:

1. Disputes related to convening general meetings of shareholders/ participants or expelling participants;[32]

19. SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2015, No. 409-FZ, *supra* note 12, at art. 2(6); SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2015, No. 382-FZ, art. 44(1).

20. SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2015, No. 382-FZ, art. 44(8).

21. *Id.* at art. 44(1).

22. *Id.* at art. 52(13), (15), (16).

23. *Id.* at art. 13(3).

24. *Id.* at art. 14(1).

25. *Id.* at art. 16.

26. *Id.* at art. 40.

27. *Id.* at art. 30.

28. SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2015, No. 409-FZ, *supra* note 12, at art. 9(9).

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

2. Disputes arising out of notary certification of transactions involving shares in limited liability companies;[33]
3. Disputes related to challenges of individual directives, decisions, and actions of state, local, or similar governmental bodies, or public officials;[34] and
4. Disputes involving a company included in the list of Russian strategic entities subject to Federal Law 57-FZ[35] (except for share transactions that are not subject to preliminary approval).[36]

As of February 2017, parties may enter into arbitration agreements on arbitrable corporate disputes.[37] Subject to the requirements of Law 382-FZ, an arbitration agreement may be part of a Russian company's charter binding on all shareholders.[38]

B. KAZAKHSTAN

The Kazakhstan Civil Procedure Code (Civil Procedure Code or Code) took effect on January 1, 2016.[39] While retaining basic concepts of the previous code, the revised Civil Procedure Code introduces significant new items relating to trial procedure. One of the most important changes is a transition from the previous five-level judicial system[40] to a three-level judicial system comprised of courts of first instance, courts of appeal, and courts of cassation.[41]

33. *Id.*

34. *Id.*

35. Federal'nyi Zakon RF O Poryadke Osushchestvleniya Inostrannykh Investitsiy v Khozyaystvennyye Obshchestva, Imeyushchiye Strategicheskoye Znacheniye Dlya Obespecheniya Oborony Strany i Bezopasnosti Gosudarstva [Federal Law of the Russian Federation on the Procedure for Foreign Investment in Business Entities of Strategic Importance for National Defense and State Security], SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2008, No. 57-FZ, art. 2, *available at* http://pravo.gov.ru/proxy/ips/?docbody=&nd=102121606&intelsearch=57-FZ.

36. SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2015, No. 409-FZ, *supra* note 12, at art. 9(9).

37. *Id.* at art. 13(7).

38. *Id.* at art. 2(8); SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2015, No. 382-FZ, art. 7(7).

39. *New Civil Procedure Code of Kazakhstan*, GRATA FINANCE & SECURITIES GROUP, TENGRI NEWS (Feb. 16, 2016, 17:38), https://en.tengrinews.kz/opinion/562/.

40. *See* GRAZHDANSKIY PROTSESSUALNYI KODEKS RESPUBLIKI KAZAKHSTAN [Civil Procedure Code of the Republic of Kazakhstan] 1999, No. 411-II, art. 40; 42(2); 43; 44.

41. GRAZHDANSKIY PROTSESSUALNYI KODEKS RESPUBLIKI KAZAKHSTAN [Civil Procedure Code of the Republic of Kazakhstan] 2015, No. 377-V ZRK, chapters 18, 52, 54, *available at* http://online.zakon.kz/document/?doc_id=34329053.

The Civil Procedure Code provides that investment disputes[42] are under the jurisdiction of the court of Astana;[43] however, if a party to an investment dispute is a "large investor,"[44] then the investment dispute is subject to the jurisdiction of the Supreme Court of Kazakhstan.[45] The Code also encourages dispute resolution by amicable means. For instance, a judge is obliged to encourage the parties to reconcile a dispute at all stages of civil procedure.[46] A conciliation process called the "participative procedure" was established and is to be conducted with the assistance of the parties' attorneys through negotiations without the judge's intervention.[47]

The Civil Procedure Code also introduced a new, shorter written court procedure,[48] which is like an ordinary proceeding but is simplified and conducted without the adversarial parties present.[49] Only specific categories of cases may be resolved through this type of proceeding.[50] Another change regards the tendering of evidence to the court. Currently, evidence is tendered at the preparatory stage of litigation[51] and also may be proffered at the judicial examination stage if the proffering party was unable, for justifiable reasons, to provide it at the preparatory stage.[52] But the Civil Procedure Code now mandates that a number of procedural actions, such as filing a counterclaim,[53] amending a claim,[54] and increasing or reducing claims,[55] may occur only at the preparatory stage. At the same time, the

42. PREDPRINIMATELSKIY KODEKS RESPUBLIKI KAZAKHSTAN [Commercial Code of the Republic of Kazakhstan] 2015, No. 375-V ZRK, art. 296(1).

43. GRAZHDANSKIY PROTSESSUALNYI KODEKS RESPUBLIKI KAZAKHSTAN [Civil Procedure Code of the Republic of Kazakhstan] 2015, No. 377-V ZRK, art. 27(4), *available at* http://online.zakon.kz/document/?doc_id=34329053.

44. A "large investor" is an individual or legal entity making investments into Kazakhstan that total at least two million Monthly Calculations Indexes (MCIs"). PREDPRINIMATELSKIY KODEKS RESPUBLIKI KAZAKHSTAN [Commercial Code of the Republic of Kazakhstan] 2015, No. 375-V ZRK, art. 274(4). In 2016, one MCI was equal to 2121 Kazakh tenge. Zakon Respubliki Kazakhstan o Respublikanskom Byudzhete na 2016-2018 [Law of the Republic of Kazakhstan on the Republican Budget for 2016-2018], 2015 No. 426-V ZRK, art. 11(4).

45. GRAZHDANSKIY PROTSESSUALNYI KODEKS RESPUBLIKI KAZAKHSTAN [Civil Procedure Code of the Republic of Kazakhstan] 2015, No. 377-V ZRK, art. 28(2), *available at* http://online.zakon.kz/document/?doc_id=34329053.

46. At the preparation stage, a judge explains to the parties in a dispute their right to enter into a settlement agreement, a mediation agreement, a participative agreement, or apply to arbitration. *Id.* at art. 165(5). A judge is expected to urge the parties to use one of these methods of conciliation and to assist in the settlement of a dispute at all stages of litigation. *Id.* at art. 174(1).

47. *Id.* at art. 181(1), (2).

48. *Id.* at chapter 13.

49. *Id.* at art. 146(5).

50. *Id.* at art. 145.

51. *Id.* at art. 73(1).

52. *Id.*

53. *Id.* at art. 153(1).

54. *Id.* at art. 169(1).

55. *Id.*

preparatory stage has been lengthened from seven business days[56] to fifteen business days,[57] and in extraordinary circumstances, it may be extended up to one month.[58]

The Civil Procedure Code established a cap on reimbursement for legal representation costs at ten percent of the adjudicated amount in the case of material (property) claims, and no more than 300 MCIs[59] in the case of moral (non-property) claims.[60] In addition, new rules for calculating the state fee (*i.e.*, filing fees and court costs) were established for claims of moral harm caused by the dissemination of information discrediting one's honor, dignity and business reputation (similar to Western concepts of libel and slander). Prior to the enactment of the Civil Procedure Code, the state's fee for such claims was fifty percent of MCI,[61] but now is one percent of the recovery requested for individuals[62] and three percent for legal entities.[63] The Civil Procedure Code does not require the payment of a state fee for filing an appeal petition, but the state fee is required when filing a cassation petition.

The Civil Procedure Code also changed the effective date of a judgment from a court of first instance. Whereas the Old Civil Procedure Code allowed fifteen days for appeal following the issuance of a court judgment,[64] as a general rule, the Code now provides that a court judgment comes into force one month after the date on which the judgment was awarded in its final form.[65]

The Civil Procedure Code expanded the powers of the courts of appeal as well. For example, a court of appeals now has the right to overturn a judgment and remand a case for reconsideration by a court of first instance in any of the following circumstances:[66] a case was considered by an improper composition of a court or in violation of jurisdictional rules;[67] a

56. GRAZHDANSKIY PROTSESSUALNYI KODEKS RESPUBLIKI KAZAKHSTAN [Civil Procedure Code of the Republic of Kazakhstan] 1999, No. 411-II, art. 167.

57. GRAZHDANSKIY PROTSESSUALNYI KODEKS RESPUBLIKI KAZAKHSTAN [Civil Procedure Code of the Republic of Kazakhstan] 2015, No. 377-V ZRK, art. 164(1), *available at* http://online.zakon.kz/document/?doc_id=34329053.

58. *Id.*

59. GRAZHDANSKIY PROTSESSUALNYI KODEKS RESPUBLIKI KAZAKHSTAN [Civil Procedure Code of the Republic of Kazakhstan] 2015, No. 377-V ZRK, art. 113(1), *available at* http://online.zakon.kz/document/?doc_id=34329053.

60. *Id.*

61. Zañ O Nalogah i Drugih Objazatel'nyh Plate_ah v Bjud_et (Nalogovyj Kodeks) [Law on Taxes and Other Obligatory Payments Into the Budget (Tax Code)] No. 99-IV, art. 535(7).

62. *Id.* at art. 535(1).

63. *Id.*

64. GRAZHDANSKIY PROTSESSUALNYI KODEKS RESPUBLIKI KAZAKHSTAN [Civil Procedure Code of the Republic of Kazakhstan] 1999, No. 411-II, art. 334(3).

65. GRAZHDANSKIY PROTSESSUALNYI KODEKS RESPUBLIKI KAZAKHSTAN [Civil Procedure Code of the Republic of Kazakhstan] 2015, No. 377-V ZRK, art. 240(1), 403(3), *available at* http://online.zakon.kz/document/?doc_id=34329053.

66. *Id.* at art. 424 (5).

67. *Id.* at art. 427(4)(1).

case was considered by a court of first instance in violation of the rules regarding language of court proceedings;[68] a court of first instance resolved a case regarding the rights and obligations of third parties not involved in the case;[69] or a judgment either was not signed by a judge or was signed by a judge who did not hear the case.[70]

The procedural rules for cassation courts have also undergone major changes. Generally, a cassation petition may be filed within six months of a judgment's effective date.[71] But if the procedure of appeal to the cassation court is improperly followed by a party, it is unlikely that the case will be considered by the cassation court.[72] According to the Civil Procedure Code, the following types of cases also cannot be considered by a cassation court:

1. a case considered through a simplified civil procedure;
2. a case settled by settlement agreement, mediation agreement, or participative agreement;
3. a case abandoned by the renunciation of the claim;
4. a case for material claims over 2000 MCIs for individuals and 30,000 MCIs for legal entities;
5. a case regarding the settlement of the insolvency of a debtor; and
6. a dispute arising from rehabilitative procedure and bankruptcy.[73]

But the Code establishes that the last two categories above (as well as certain other types of cases), regardless of appellate proceedings, may be considered by a cassation court at the behest of the Chairman of the Supreme Court and the General Prosecutor[74] if a judgment may cause irreversible harm to the lives and health of the people, economy, and/or security of Kazakhstan, violate the rights and lawful interests of an indefinite number of people or other public interests, or violate the uniform interpretation and application of laws by the courts.[75]

III. Public-Private Partnership Law

Private participation in the development of public infrastructure through public-private partnerships (PPPs) is currently a global trend, including in post-Soviet countries such as Russia and Belarus. According to UN data, over fifty percent of the world's population now lives in urban areas, and many countries are becoming increasingly urbanized.[76] This global

68. *Id.* at art. 427(4)(3).
69. *Id.* at art. 427(4)(4).
70. *Id.* at art. 427(4)(5).
71. *Id.* at art. 436(1).
72. *Id.* at art. 434.
73. *Id.*
74. *Id.* at art. 434(3).
75. *Id.* at art. 438(6).
76. *World's Population Increasingly Urban with More Than Half Living in Urban Areas*, UN (July 10, 2014), http://www.un.org/en/development/desa/news/population/world-urbanization-prospects-2014.html.

phenomenon is changing the landscape and infrastructure of many developing countries, and in 2016, lawmakers in Russia and Belarus modified their respective legislation on PPPs to facilitate improvements in the quality of life of their current and future residents.

A. Russia

Until recently, PPPs in Russia were governed by Federal Law No. 115-FZ "On Concession Agreements" (Concession Law), dated July 21, 2005,[77] which outlined the procedure for execution and implementation of PPPs in Russia at the federal level. The Concession Law allowed a concessionaire to develop and use a project which was or would be owned by the government, but allowed only for a Build-Operate-Transfer (BOT) model, whereby private investors could not acquire ownership of a PPP project. Several projects in Russia have been and continue to be executed using the BOT model, including the Western High Speed Diameter toll road[78] and the Pulkovo Airport[79] in St. Petersburg.

On January 1, 2016, the new Federal Law "On Public-Private Partnership, Municipal-Private Partnership in the Russian Federation and Amending Certain Legislative Acts of the Russian Federation" (Russian PPP Law) took effect.[80] Some provisions of the new Russian PPP Law are similar to the Concession Law, but there are some noticeable differences.

While the new Russian PPP Law will co-exist with the Concession Law, the Russian PPP Law allows for ownership transfer from the government to a private partner (usually a project-specific or single-purpose company).[81] Whereas the Concession Law allowed only one type of PPP structure (BOT), the new law significantly expands the forms of PPP structures in Russia. It allows, among others, Build-Own-Operate (BOO), Design-Build-Own-Operate (DBOO), Design-Build-Operate-Transfer (DBOT), Design-Build-Own-Operate-Transfer (DBOOT), and Build-Operate-Transfer (BOT) structures.[82]

Under the Russian PPP Law, only a Russian legal entity may be a private partner in a PPP project, with the exception of certain other Russian entities such as state or municipal unitary enterprises or institutions, or non-profit

77. Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF] [Russian Federation Collection of Legislation] 2005, No. 115-FZ, *available at* http://pravo.gov.ru/proxy/ips/?docbody=&nd=102099032&intelsearch=115-FZ.

78. *About the Company: PPP Agreement*, Northern Capital Highway, http://nch-spb.com/eng/about-company/common-info/ (last visited Apr. 10, 2017).

79. *Public-Private Partnership Agreement (PPP Agreement)*, Pulkovo Airport, https://www.pulkovoairport.ru/en/about/agreement/ (last visited Apr. 10, 2017).

80. Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF] [Russian Federation Collection of Legislation] 2015, No. 224-FZ, art 48, *available at* http://pravo.gov.ru/proxy/ips/?docbody=&nd=102376338&intelsearch=224-FZ.

81. *Id.* at art. 5.

82. *Id.* at art. 6.

organizations created by the state or municipalities.[83] On the other hand, concessionaires under the Concession Law may be Russian or foreign legal entities, unincorporated partnerships, and sole proprietors.

The Concession Law allows the parties to a concession agreement to agree that disputes will be heard in Russian state courts or arbitration tribunals,[84] whereas the Russian PPP Law allows parties to a PPP agreement to choose any dispute resolution mechanism, presumably including arbitration by foreign tribunals.

In terms of financing and securing payments, the Concession Law does not allow concession projects to be pledged to a financing party, but a project developed under the Russian PPP Law may be pledged when a private partner secures the performance of its obligations under a separate agreement with the lender.[85] While there is a special tax regime for concession projects under the Russian Tax Code,[86] the Russian PPP Law does not contain any provisions relating to taxation. PPP projects most likely will fall under a tax regime created by different legal instruments (e.g., a combination of tax provisions in the Russian Tax Code, the Concession Law, and other tax laws and regulations relating to infrastructure projects).

B. BELARUS

Unlike Russia, where infrastructure development has always been recognized as an important mechanism for economic growth, Belarus is only beginning to develop a legal framework regulating public infrastructure development. Belarus had no specific concession law before adopting its new law "On Public-Private Partnerships," which took effect in July 2016 (Belarusian PPP Law).[87] Before enactment of the Belarusian PPP Law, the Investment Code of the Republic of Belarus (Investment Code) regulated concessions.[88] Until passage of the Belarusian PPP Law, only mineral assets

83. *Id.* at art. 5.

84. SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2005, No. 115-FZ, art. 17, *available at* http://pravo.gov.ru/proxy/ips/?docbody=&nd=102099032&intelsearch=115-FZ.

85. SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2015, No. 224-FZ, art 7, *available at* http://pravo.gov.ru/proxy/ips/?docbody=&nd=102376338&intelsearch=224-FZ.

86. Federal'nyi Zakon RF O Vnesenii Izmeneniy v Federal'nyi Zakon "O Kontsessionnykh Soglasheniyakh" i Otdel'nyye Aakonodatel'nyye akty Rossiyskoy Federatsii [Federal Law of the Russian Federation on Amending the Federal Law On Concession Agreements and Some Legislative Acts of the Russian Federation], SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2008, No. 108-FZ, art. 5, *available at* http://pravo.gov.ru/proxy/ips/?docbody=&nd=102122970&intelsearch=108-FZ.

87. Zakon Respubliki Belarus O Gosudarstvenno-Chastnom Partnerstve [Federal Law of the Republic of Belarus On Public-Private Partnerships], 2015, No. 345-3, *available at* http://www.pravo.by/main.aspx?guid=12551&p0=H11500345&p1=1.

88. *See* INVESTITSIONNYY KODEKS RESPUBLIKI BELARUS [Investment Code of the Republic of Belarus], 2001, No. 37-3, art. 49, 76, *available at* http://pravo.levonevsky.org/kodeksby/ink/20130317/index.htm.

could be offered for concession;[89] termination and compensation provisions of project agreements were not clearly regulated, and very limited sources of government support were available.[90] Thus, the Investment Code was an insufficient legal basis for the development of PPPs in Belarus, and the new Belarusian PPP Law was adopted to provide specific guidance.

Under the Belarusian PPP Law, PPPs can be developed in various sectors, including transportation, public utilities, health care, agriculture, education, culture, energy, and telecommunications.[91] The Belarusian PPP Law provides certain roles for the President of the Republic of Belarus, Council of Ministers, Ministry of Economy, Ministry of Finance, and other governmental bodies.[92] It allows for transfer of infrastructure to a private partner for possession and use, although ownership rights remain with the government.[93] The Belarusian PPP Law sets the following stages for PPP project development:

1. Preparation, review and valuation of tender offers relating to PPP projects;
2. Decision relating to development of a PPP project;
3. Tender process by which a private partner for a PPP project will be selected; and
4. Execution and performance of the PPP agreement.[94]

The Belarusian PPP Law allows many agreement provisions to be negotiated freely between the parties, but some provisions are mandatory. For example, the governing law of the PPP agreement must be Belarusian law,[95] and the PPP agreement must be registered with the Ministry of Economy.[96]

Financing of PPP projects in Belarus may be done by a Belarusian or foreign entity in full or in part.[97] Private partners enjoy all guarantees generally provided to investors, including guaranteed money transfer and protection against nationalization.[98] The Belarusian PPP Law also provides guarantees for creditors of private partners.[99] In addition to litigation, international arbitration is one of the dispute resolution mechanisms provided by the Belarusian PPP Law.[100]

89. *Id.* at art. 51.

90. *Id.* at art. 12-13. International arbitration, however, is possible for foreign investors under the Investment Code. *Id.* at art. 46.

91. Zakon Respubliki Belarus O Gosudarstvenno-Chastnom Partnerstve [Federal Law of the Republic of Belarus On Public-Private Partnerships], 2015, No. 345-3, art. 5, *available at* http://www.pravo.by/main.aspx?guid=12551&p0=H11500345&p1=1.

92. *Id.* at ch. 2.

93. *Id.* at art. 25.

94. *Id.* at art. 6.

95. *Id.* at art. 24(3).

96. *Id.* at art. 24(4).

97. *Id.* at art. 26(1).

98. *Id.* at art. 36.

99. *Id.* at art. 37.

100. *Id.* at art. 39(2).

Initially, seven PPP pilot projects were planned in Belarus,[101] but only one transportation project is currently being developed: upgrading an 85-kilometer section of the M10 road, an international transportation corridor and alternate route between Belarus, the EU, Russia, and China.[102] As a result of the Belarusian PPP Law, the World Bank, the European Bank for Reconstruction and Development (EBRD), and the International Finance Corporation (IFC) are engaged in supporting this project. A private partner will design, build, operate, and maintain the motorway section, and in return, receive an "availability fee" from the Belarusian authorities.[103] The tender is expected to occur in 2017.[104]

Despite many unknowns, the Belarusian PPP Law and engagement of international organizations in the first PPP pilot project in Belarus provide an opportunity for global investors to assess regulatory and political risks for investment in Belarusian PPPs. While it is too early to analyze the effects of the new Russian PPP Law and the Belarusian PPP Law, it is important that PPPs in Russia and Belarus now extend beyond concessions. The new PPP laws provide universal terms and principles and an expanded list of acceptable PPP structures, as are found in PPP legislative frameworks in developed countries. The new PPP laws aspire to attract more private investors and funds to Russia and Belarus and to improve Russian and Belarusian infrastructure.

IV. Energy Law

A. Ukraine

In 2016, Ukraine continued to implement the European Energy Community's Energy Directives with the primary goal of liberalizing the Ukrainian energy market. The ongoing conflict with Russia in eastern Ukraine continues to significantly impact Ukraine's energy market and overall economy. Ukraine's main priority is improving its energy security, in part by increasing its own gas production. In late 2015, Tax Code reforms were adopted mandating decreases in gas production payments that were

101. 7 *Pilot PPP Projects Chosen in Belarus*, Nat'l Agency of Investment and Privatization, http://www.investinbelarus.by/sp/press/news/c70f38b1f4ed8e30.html (last visited Apr. 11, 2017).

102. Anton Usov, *EBRD to Help Belarus Prepare First PPP – M10 Road*, European Bank for Reconstruction & Development (May 10, 2016), http://www.ebrd.com/news/2016/ebrd-to-help-belarus-prepare-first-ppp-m10-road.html.

103. In PPP transportation contracts, "availability fee" or "availability payment" refers to a project delivery method whereby a governmental entity makes fixed payments to a private contractor for performance of the project regardless of demand. *See* Dr. Silviu Dochia & Michael Parker, *Introduction to Public-Private Partnerships with Availability Payments*, Public Works Financing, http://www.pwfinance.net/document/research_reports/9%20intro%20availability.pdf (last visited Apr. 11, 2017).

104. Usov, *supra* note 102.

enacted in 2014 and largely seen as unreasonable.[105] In addition, legislative amendments aimed at simplifying the process to obtain a license for gas production were developed.

Another very important development in the energy sector concerns the restructuring of Ukrainian oil and gas monopolist, the National Joint Stock Company (NJSC) Naftogaz, which will be carried out pursuant to a new law "On the Natural Gas Market"[106] and the Third Energy Package.[107] Unbundling gas transportation activity from gas production and supply should increase transparency in the sector and attract investment.[108] Investors are particularly interested in this reform because Ukrainian legislation provides that a foreign legal entity may own up to forty-nine percent of the operator of the Ukrainian gas transportation system. Another sign that Ukraine is opening its gas market is that a significant number of private traders entered Ukraine to import gas from Europe in 2016, demonstrating that Naftogaz no longer has a monopoly on importing gas.[109]

The Ukrainian electricity market underwent significant changes on September 22, 2016, when two important laws were approved by Parliament. First, Parliament adopted a law "On the National Commission for State Regulation of Energy and Utilities" (NCSREU),[110] statutorily mandating the NCSREU's existence (as opposed to the previous situation of its existence only by regulation) in order to fulfill Ukraine's commitment as a party to the EU Energy Community. The law also set out a transparent

105. In 2015, the Ukrainian Parliament adopted amendments to the Tax Code that reduced the payment for extraction of natural gas to be sold to industrial consumers (to be paid by natural gas producers) from fifty-five percent to twenty-nine percent, and twenty-eight percent to fourteen percent, depending on the extraction depth (effective Jan. 1, 2016), and reduced the payment for extraction of natural gas to be sold to households from seventy percent to fifty percent for extractions up to 5km deep (effective Apr. 1, 2016), which was further reduced to twenty-nine percent (effective Jan. 1, 2017). *Tax Rates for Natural Gas Production Significantly Decreased*, CMS LAW (Dec. 30, 2015), http://www.cms-lawnow.com/ealerts/2015/12/ukraine-tax-rates-for-natural-gas-production-significantly-decreased.

106. *See* Zakon Ukrayini Pro Rynok Pryrodnoho Hazu [Law of Ukraine on the Natural Gas Market], 2015, No. 329-VIII, ch. 9, *available at* http://zakon5.rada.gov.ua/laws/show/329-19.

107. As a member of the European Energy Community since February 1, 2011, Ukraine implemented European Union directives in the energy sphere (the so-called "Third Energy Package") by means of Directive 2009/73/EC concerning common rules for the internal market in natural gas and Regulation (EC) 715/2009 on conditions for access to the natural gas transmission networks.

108. On September 22, 2016, the Cabinet of Ministers of Ukraine passed a resolution on the management of Naftogaz, which provided for the transfer of 100% shares of the company to the Cabinet of Ministers of Ukraine. Postanova O Deyaki Pytannya Upravlinnya Publichnym Aktsionernym Tovarystvom "Natsional'na Aktsionerna Kompaniya "Naftohaz Ukrayiny" [Decree on Certain Issues of Managing JSC National Joint Stock Company Naftogaz of Ukraine], 2016, No. 675, *available at* http://zakon2.rada.gov.ua/laws/show/675-2016-%D0%BF.

109. *See* Annual Report, NAFTOGAZ (2015), *available at* http://www.naftogaz.com/files/Zvity/Naftogaz_Annual_Report_2015_engl.pdf.

110. Zakon Ukrayini [Law of Ukraine] No. 1540-VIII, 2016, *available at* http://zakon5.rada.gov.ua/laws/show/1540-19.

procedure for appointing and rotating members of the NCSREU, ensuring that the regulator is professional, transparent, and independent. Second, Parliament approved an amendment to Ukraine's law "On the Natural Gas Market," which envisages a gradual transition from the current system of state-owned electricity purchaser[111] to a privatized model of operation using direct supply agreements, a market for "day-ahead" contracts, and a balancing market. These reforms will provide more transparency and healthier competition in the electricity market.

In mid-2016, the State Property Fund of Ukraine announced a new "oblenergo" (electricity supply company) sale schedule.[112] Currently, the State Property Fund of Ukraine is preparing for privatization of six electricity supply companies, three large hydro-electric power plants, and state co-generation power plants and coal mines.

Because Ukraine is an unusually large energy consumer, the International Monetary Fund (IMF) required the country to increase its tariffs on energy sources for private households to an economically viable level.[113] Therefore, energy efficiency has become a more important issue in Ukraine, attracting investment from international financial institutions and Ukrainian banks, which provide financing for energy efficiency and renewable energy projects. Aiming to increase the share of renewable energy in the country's energy balance, last summer, despite Ukraine's economic crisis, the new government adopted legislative amendments demonstrating its support for the development of renewables. Consequently, the renewable energy sector, together with "green" tariffs, is still attractive for investors in Ukraine.

111. Historically, the state enterprise Energorynok bought all of the electricity produced in Ukraine (as a wholesale purchaser) and sold it to electricity supply companies (suppliers), which then sold it to customers. Purchased energy is sold by Energorynok to 27 oblast energy companies (oblenergo) and suppliers licensed to supply electricity with unregulated tariffs (as independent suppliers). Oblenergos sell electricity to final consumers with regulated tariffs. The new law allows power producers to sell their electricity directly to the suppliers through freely negotiated bilateral contracts, bypassing Energorynok entirely. Thus, the producer and supplier can mutually decide on the price, volume, and terms of the supply.

112. The sale schedule was approved by SPFU Order No.774 (Apr.15, 2016).

113. In 2015, the National Commission for State Regulation of Energy and Utilities passed a resolution providing for increased tariffs in five stages. *See* NCSREU Res. 220 (Feb. 26, 2015), *available at* http://www.nerc.gov.ua/index.php?id=14359. At a meeting on April 27, 2016, the Cabinet of Ministers set the unified gas price for the population at the level of UAH 6,879 per 1,000 cubic meters, effective May 1, 2016. The tariffs will constitute 100% of the "parity from import" price and will include inter alia the cost of gas transportation through pipelines and taxes. *See* Iuliia Ogarenko & Ivetta Gerasimchuk, *Winter Approaches: The Real Test for Ukraine's Energy Subsidy Reforms*, GLOBAL SUBSIDIES INITIATIVE (Sept. 1, 2016), https://www.iisd.org/gsi/news/winter-approaches-ukraine-subsidy-reforms#ref1.

V. Data Privacy and Religious Freedom Law in Russia

On July 6, 2016, Russian President Vladimir Putin signed into law new counter-terrorism legislation commonly referred to as the "Yarovaya Law"[114] after its principal sponsor, arch-conservative senator Irina Yarovaya. The Yarovaya Law amended existing Russian federal laws on data retention and added restrictions on religious freedom. Most of the amendments took effect on July 20, 2016, although some (such as those relating to storage of metadata) will not take effect until July 1, 2018.[115]

A. Telecommunications Portion of Yarovaya Law

The amendments regarding telecommunications require "telecom providers" and "Internet arrangers"[116] to:

1. Allow access to communicated information (such as telephone calls, email messages, text messages, etc.) by Russian government investigators and prosecutors;

114. Federal'nyi Zakon RF O Vnesenii Izmeneniy v Federal'nyi Zakon "O Protivodeystvii Terrorizmu" i Otdel'nyye Zakonodatel'nyye akty Rossiyskoy Federatsii v Chasti Ustanovleniya Dopolnitel'nykh mer Protivodeystviya Terrorizmu i Obespecheniya Obshchestvennoy Bezopasnosti [Federal Law on Amending the Federal Law on Combating Terrorism and Certain Legislative Acts of the Russian Federation to Establish Additional Measures to Counter Terrorism and Ensure Public Safety], Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF] [Russian Federation Collection of Legislation] 2016, No. 374-FZ, *available at* http://pravo.gov.ru/proxy/ips/?docview&page=1&print=1&nd=102404066&rdk=0&&empire=.

115. Ksenia Koroleva, *"Yarovaya" Law – New Data Retention Obligations for Telecom Providers and Arrangers in Russia*, Latham & Watkins LLP: Global Privacy & Security Compliance Law Blog (July 29, 2016), http://www.globalprivacyblog.com/privacy/yarovaya-law-new-data-retention-obligations-for-telecom-providers-and-arrangers-in-russia/.

116. The term "telecom provider" is defined as "a legal entity or a sole proprietor providing communication services on the basis of a Russian license." Federal'nyi Zakon RF O Svyazi [Federal Law of the Russian Federation on Communications], Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF] [Russian Federation Collection of Legislation] 2003, No. 126-FZ, *available at* http://pravo.gov.ru/proxy/ips/?docbody=&nd=102082548&intelsearch=126-FZ; Koroleva, *supra* note 115. Communication services include "[r]eceiving, processing, storing, transferring or delivering any physical or electronic communications," and provision of such services usually requires a license under Russian law. Ukazy Ob Utverzhdenii Perechnya Naimenovaniy Sslug Svyazi, Vnosimykh v Litsenzii, i Perechney Litsenzionnykh Usloviy [Decree on Approval of a List of Communication Services Subject to a License and Rules and Procedures for Receipt of a License], Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF] [Russian Federation Collection of Legislation] 2005, No. 87-FZ, *available at* http://pravo.gov.ru/proxy/ips/?docbody=&nd=102091109&intelsearch=87-FZ; Koroleva, *supra* note 115. The term "Internet arranger" is defined as "a person ensuring the functioning of information systems and/or software used to receive, transmit, deliver, and/or process electronic messages of Internet users" (e.g., social media). Federal'nyi Zakon RF Ob Informatsii, Informatsionnykh Tekhnologiyakh i o Zashchite Informatsii [Federal Law of the Russian Federation in Information, Information Technology and Data Protection], Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF] [Russian Federation Collection of Legislation] 2006, No. 149-FZ, *available at* http://pravo.gov.ru/proxy/ips/?docbody=&nd=102108264&intelsearch=149-FZ; Koroleva, *supra* note 115.

2. Stop providing communication services to any user who fails to respond to a request by investigators or prosecutors to confirm that user's identity;
3. Maintain inside the Russian Federation:
   a. For three years (in the case of telecom companies) or one year (for Internet providers), the metadata information confirming transmission, receipt, delivery, and processing of voice data, text messages, pictures, video, sound, or other communications;
   b. For six months, the actual contents of such communications.[117]

In addition, the law requires providers to supply any other information "which is necessary for these authorities to achieve their statutory goals" and to assist the authorities with decoding the data provided.[118] Violation of these provisions can result in an administrative fine of up to one million rubles.[119] Arguably, failure to maintain or provide more than one communication (*e.g.*, several emails) could be viewed as multiple violations, but this is yet to be tested.

An uproar ensued over the passage of these provisions on legal, technical, and financial grounds. One of the major controversies surrounding the Yarovaya Law is that it appears to extend to all telecom or Internet providers who facilitate any communication to or from Russia, thus encompassing foreign providers such as Google, Facebook, Yahoo, and many others.[120] Many of these companies are located in countries that forbid, on privacy grounds, the tracking and maintenance of certain communications covered by the Russian law (such as telephone calls), putting these global providers in a position of having to violate either their own country's laws or Russian law (if they are to continue operating in Russia).[121] One western operator, Private Internet Access, immediately discontinued its business in Russia upon passage of the law for this reason.[122]

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117. The requirement that contents of communications be stored for six months will take effect on July 1, 2018 (or possibly July 1, 2023, if a current draft law seeking such postponement is passed). Koroleva, *supra* note 115.

118. SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2016, No. 374-FZ, *supra* note 114, at art. 13, 15.

119. *Irina Yarovaya's "Anti-Terrorist" War on Civil Rights*, MEDUZA (June 22, 2016, 15:51), https://meduza.io/en/feature/2016/06/22/irina-yarovaya-s-anti-terrorist-war-on-civil-rights; *Russian Minister Expects No Rise in Telecom Prices Due to New Anti-Terror Law*, TASS (July 7, 2016, 15:28), http://tass.com/economy/886926.

120. *See* Julianna Tabastajewa, *Yarovaya Law: Russian Parliament Passes Package of Laws on Data Retention Obligations*, LEXOLOGY (Sept. 12, 2016), http://www.lexology.com/library/detail.aspx?g=F07d1a93-af0c-46da-b1e9-c2ad78c50437.

121. *See id.*

122. *We Are Removing Our Russian Presence*, PRIVATE INTERNET ACCESS (July 2016), https://www.privateinternetaccess.com/forum/discussion/21779/we-are-removing-our-russian-presence.

B. Religious Portion of Yarovaya Law

The Yarovaya Law also places restrictions on religious activities outside of designated places of worship.[123] The amendments to Russia's Religion Law[124] require that "missionary activity" be done "without hindrance" only at churches and other religious sites designated by the chapter, and that it is expressly forbidden to perform missionary activities in private homes. "Missionary activity" is defined as

> the activity of a religious association, aimed at disseminating information about its beliefs among people who are not participants in that religious association, with the purpose of involving these people as participants. It is carried out directly by religious associations or by citizens and/or legal entities authorized by them, publicly, with the help of the media, the internet or other lawful means.[125]

Missionary activities may be performed only by authorized members of registered religious groups and organizations. Thus, only state-registered religious groups and organizations may engage in such religious expression.[126] The amendments prohibit even the informal sharing of beliefs, such as responding to a question, by individuals.[127] Citizens are required to report unauthorized religious activity to the government or face fines.[128] The law also increases the punishment for those engaging in "extremist" activity, a term used to prosecute Muslims and Jehovah's Witnesses.[129]

123. Anugrah Kumar, *Russia Charges American Pastor Under New Anti-Evangelism Law*, Christian Post (Oct. 2, 2016, 10:40 AM), http://www.christianpost.com/news/russia-charges-american-pastor-under-new-anti-evangelism-law-170362/.

124. Federal'nyi Zakon RF O Svobode Sovesti i o Religioznykh ob"Yedineniyakh [Federal Law of the Russian Confederation on Freedom of Conscience and Religious Associations], Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF] [Russian Federation Collection of Legislation] 1997 (as amended by 374-FZ), No. 125-FZ, art. 24(1), *available at* http://pravo.gov.ru/proxy/ips/?docbody=&nd=102049359&intelsearch=125-FZ.

125. *Id.*; *see also* Victoria Arnold, *Russia: Anti-Sharing Beliefs Law First Use*, ISKON News (Aug. 24, 2016), https://iskconnews.org/russia-anti-sharing-beliefs-law-first-use,5760/.

126. The amendments particularly affect Protestants and Jehovah's Witnesses in Russia, "who often do not have their own permanent buildings." Victoria Arnold, *Putin Signs Sharing Beliefs, "Extremism," Punishments*, Forum 18 News (July 8, 2016), http://forum18.org/archive.php?article_id=2197.

127. *Id.*

128. K. Shellnutt, "Russia's Newest Law: No Evangelizing Outside of Church," Christianity Today, July 8, 2016, http://www.christianitytoday.com/gleanings/2016/june/no-evangelizing-outside-of-church-russia-proposes.html.

129. Victoria Arnold, *"Extremism" Religious Freedom Survey*, Forum 18 News (Sept. 13, 2016), http://www.forum18.org/archive.php?article_id=2215.

Violation of the religious portion of the Yarovaya Law can result in a fine of up to 50,000 rubles for individuals (about six weeks' wages for the average Russian) and one million rubles for organizations.[130]

130. Elizabeth A. Clark, *Russia's New Anti-Missionary Law in Context*, RELIGIOUS FREEDOM INSTITUTE (Aug. 30, 2016), https://www.religiousfreedominstitute.org/cornerstone/2016/8/30/russias-new-anti-missionary-law-in-context.

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