

## Legal Alert

January 2010

On 1 February 2010, the Federal Law "On the Principles of State Regulation of Trading Activity in the Russian Federation" (the "**Law**") comes into force, which will substantially change the rules applicable to trade activities.

The main new features:

1. The Law is comprehensive and does not apply only to retail chains, but also to any party engaged in trade of any goods;
2. State regulation of trade will have three principal forms: technical regulation, anti-monopoly regulation, and state supervision;
3. New rules are established for concluding and implementing supply agreements for food products, including deadlines for payment (10, 30 and 45 days, depending on the product) and a prohibition on discrimination and unfair practices;
4. Introduction of the possibility of government price control for socially significant basic food products should the price rise by 30% over 30 days;
5. Limitation of the dominant positions of retail chains to a 25% share of the market for food products;
6. Elimination of administrative barriers in trade, and creation of targeted development programs for trade and investment projects.

We expand on these in more detail below:

1. *The new legal regulation is complex in nature, and extends to any trade activity involving any goods, with specifically established exceptions.*

**The Law extends to any trade activity**, starting with the first resale of the product by a re-seller (after the manufacturer), and ending with the retail chain (store) selling the product to the consumer (end user).

In particular, the Law brings in the following new concepts:

*"trade activity, or trade* – a type of business activity related to acquisition and sale of goods.

*"wholesale trade* – a type of trade activity related to acquisition and sale of goods for their use in business activity (including for resale) or for other purposes not related to personal, family, domestic, or other suchlike use, regardless of the volume of purchase."

Thus, the makeup of the actors falling under the Law's operation is not restricted solely to retail chains or stores, and encompasses any resale (dealer, distributor) company.

**The Law deals with trade involving any goods, not just food products.**

Exceptions are made only for securities, real estate, and also products for production-related or technical purposes, including electricity (power), other types of energy resources, i.e. goods the circulation and trade in which is regulated by special laws. Since the Law does not define "products for

production-related or technical purposes," disputes could arise about the applicability of the Law to a whole range of non-food products that might meet the criterion of products for production-related or technical purposes.

2. *The Law specifies three main methods for state regulation of trade: anti-monopoly regulation, technical regulation and state supervision.*

**Anti-monopoly regulation** boils down to applying the general prohibitions and restrictions specified by the Federal Law "On Protection of Competition," and the specific prohibitions that concern trade in food products (see points 3 and 5 for more details).

**Technical regulation** deals with the requirements for organizing and carrying out trade, and may take place not only on the federal but also on the regional level. In this regard, various laws and regulations (i.e. pieces of secondary legislation) should be expected in the near future on both the federal and regional levels.

**State supervision** consists not only of checking traders' observance of the Law's requirements, but also in a significant expansion of information exchange, which is planned at the level of the regions of the Russian Federation and which will substantially simplify the work of the anti-monopoly authorities to uncover and prove violations of the Law and of the Federal Law "On Protection of Competition."

3. *New rules are established for concluding and implementing supply agreements for food products.*

**Many rules have been introduced for the relations between traders and suppliers of food products:**

- the duty of parties to make available information on the **criteria for selecting contractors** and the **substantive agreement conditions** via an Internet site or by providing information within 14 days. Obviously, the criteria must conform to competition laws. The refusal to reveal such criteria and conditions (or revealing them incompletely), as well as deviation from the criteria and conditions already revealed entail administrative liability (respective amendments to the Russian Code on Administrative Violations have already been prepared by the Federal Antimonopoly Service);
- **restriction on the markup of a retail chain to 10%** of the price of acquired food products. Further, even this markup is prohibited for socially significant food products on the list set by the Russian Government. Since the Law prohibits other type of bonuses, it is evident that any attempt to transform bonuses into something else will contradict the spirit of the Law and be seen as an abuse;
- **setting deadlines for payment**, in particular, **10 business days**, for products with a shelf life of less than 10 days, **30 calendar days** for products with a shelf life of 10-30 days and **45 calendar days** for products with a shelf life of over 30 days, as well as alcoholic products made in Russia.
- **A ban on certain conditions** for supplies including: return of unsold goods, different kinds of remuneration and compensation for retail chains (for instance, for theft of goods in a salesroom), the requirement for a supplier to undertake marketing, rendering of product promotion services by the retail chain, and the requirement to disclose conditions of work with other contractors.

- **A ban on discriminatory conditions and unfair practices tying a contractor;** in particular, it is forbidden to:
  - obstruct access to the goods market or exit from it;
  - hinder the conclusion of similar supply contracts with the buyer's competitors;
  - establish liability for failure to observe "best conditions";
  - demand disclosure of information on transactions with the buyer's competitors;
  - establish an "entry fee," fees for a product range, etc.;
  - demand the lowering of a price to a competitor's minimum price.
- **a ban on use of commission agreements or their elements in wholesale trade of food products.**

The Law narrows down relations in trading of food products exclusively to supply relations. All other relations are allowed exclusively on a voluntary basis (for instance, under a services agreement, services may be rendered for advertisement of food products, marketing, and promotion); however, any tying is ruled out. The law does not mean only formal agreements, but also the actual behavior of the parties - the conclusion of a supply agreement cannot be made conditional upon, for example, a marketing agreement.

Prohibitions in the Law are formulated in a very specific manner, which significantly lowers the possibility to evade them, and creates substantial risks in the event they are breached. In particular, **sanctions for a breach** of competition laws may be applied, including fines on management of 30,000 to 50,000 rubles and 700,000 to 1,000,000 rubles on the company (draft amendments to the Russian Code on Administrative Offences have already been prepared by the Federal Antimonopoly Service). It is apparent that administrative liability will be applied in addition to civil law consequences, including declaring the relevant provisions of a supply agreement invalid and the resultant recovery of losses.

*4. Government price setting for socially significant basic food products should the price rise by 30% over 30 days*

In particular, the Law stipulates that Russian Government may introduce maximum acceptable retail prices for essential basic food products, for a period not longer than 90 calendar days, should prices rise by 30% or more over a 30-day period, with the goal to stabilize prices. The Law does not specify either the criteria for setting the maximum acceptable retail prices, or the possibility to compensate for possible losses incurred in connection with the sale of products at the established price.

*5. Restrictions on the dominant position of retail chains to a 25% share of the market for food products*

A retail chain is prohibited from controlling more than 25% of the market for food products (this restriction does not extend to consumer cooperatives or to transactions made before the Law takes effect).

The Law does not set a cumulative turnover amount for a dominant retail chain (1 billion rubles), something that was actively discussed earlier as a second binding criterion for this restriction.

*6. Elimination of administrative barriers in trade and creation of targeted development programs for trade and investment projects*

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The Law contains a **broad list of prohibitions for state authorities and local government bodies**; in particular, it is forbidden to:

- establish additional inspections (besides those specified by federal law) of the quality and safety of goods;
- introduce monitoring and licensing procedures;
- compel the sale of goods at set prices, etc.

The Law also specifies the duty of state authorities and local government bodies to develop and approve, on a regional and local level, **targeted programs for development of trade and investment projects** aimed at developing trade infrastructure, including economic stimuli such as minimum per capita standards for availability of retail trade facilities in the region.

This should create a serious stimulus to develop trade in the regions as there is an overlap of the interests of regional and local authorities with the interests of retail chains in developing various investment projects and programs in retail.

The Law's provisions do not apply to "foreign trade" activity; the activity of commodity exchanges; or trade at "retail markets" (fairs).

As the Law is so new and some of its rules ambiguous, how it is implemented in practice will be very important. This creates additional risks for traders trying to take timely and appropriate action to meet the new legislative requirements.