

## Legal Alert

January 2010

### New developments in Russian legislation on saving energy and increasing energy efficiency

Federal Law No. 261-FZ "On Saving Energy and Increasing Energy Efficiency, and on Amendments to Certain Legislative Acts of the Russian Federation" came into force on November 27, 2009 (the "Law"), with certain provisions of the Law taking effect later. Changes to the Tax Code of the Russian Federation, for example, became effective on December 27, 2009, and those to the Code of Administrative Offences of the Russian Federation (the "Administrative Code") take effect on June 22, 2010.

The Law establishes basic principles for the regulation of energy consumption to increase its efficiency and, inter alia, to encourage energy saving, and provides for various amendments to existing legislation (on technical regulation, housing, town-planning, taxation, etc.) to enforce energy-saving rules.

The Law supersedes Federal Law No. 28-FZ "On Saving Energy", dated April 3, 1996, the provisions of which were largely of a declarative nature and not supported by effective implementation mechanisms. The Law rather in essence is a framework act calling for a number of follow-up implementing by-laws. The deadline for adoption of some of them (May 1, 2010) is set in the Law itself.

#### I. Instruments for energy savings and energy efficiency increases

The Law provides for a set of types of governmental regulation in the field of energy savings and energy efficiency increases. The content of these instruments is summarized below.

##### 1. Energy efficiency rules for circulation of goods

###### 1) disclosure rules for energy efficiency of goods

The Law obliges manufacturers or importers of certain types of goods to determine their energy efficiency class according to rules which are to be established by a state authority based on principles to be adopted by the Russian Government, and to make the relevant disclosure of such class in the technical documentation accompanying goods, as well as through markings and labels they carry.

These provisions will take effect with respect to household energy-consuming appliances from January 1, 2011, and to PCs, other computer hardware and office equipment from January 1, 2012. The Russian Government is to approve a list of other goods to be subject to these requirements.

- 2) reduction in the circulation in the Russian Federation of incandescent electric bulbs used in alternating-current circuits for lighting purposes (“incandescent bulbs”)

As from January 1, 2011, placements of orders for the supply of incandescent bulbs (of any power) to meet state or municipal needs will no longer be permitted. As from the same date, incandescent bulbs of over 100W will be forbidden in Russia. It is planned that circulation of bulbs with power exceeding 75W will be banned from January 1, 2013, and those over 25W from January 1, 2014.

According to the Law, the Russian Government is to approve the requirements applicable to lighting fixtures and to electric bulbs used in alternating-current circuits for lighting purposes by March 1, 2010. Any such devices failing to conform to the said requirements will be barred from circulation in the Russian Federation from July 1, 2010.

## 2. Energy efficiency regulation in the construction industry and the housing and utilities sector

- 1) energy efficiency requirements applicable to buildings and other structures

The Law establishes a general rule that buildings and other structures should meet applicable energy efficiency requirements both when being commissioned and during their subsequent operation. The requirements shall be defined, the periods for their fulfillment fixed, and the persons responsible for compliance (i.e., developers or owners) designated by a state authority under rules to be adopted by the Russian Government. The requirements concerned shall apply in particular to certain elements and constructions of buildings and other structures, their properties, and those devices, technologies, and materials used during construction, capital repair, and reconstruction projects. To some categories of buildings or other structures the energy efficiency requirements shall only apply at their reconstruction or overhauling, and some will not be subject to the regulation at all, inter alia, temporary structures with a service life of less than two years, ancillary facilities, and detached buildings and structures occupying less than 50 square meters each.

The Law provides for energy efficiency requirements applicable to buildings and other structures to be revised at least once every five years.

- 2) building energy efficiency information

State construction supervisory authorities shall assign energy efficiency classes to apartment buildings (to be shown by developers on the facades

of newly-commissioned buildings). The owners of such buildings shall be required to maintain the respective signs in a proper condition, and to replace them should the building change class upon inspection.

### 3) energy consumption accounting

Under the Law, all energy resources produced, transmitted, and consumed are subject to compulsory accounting by virtue of the respective meters. This requirement covers all facilities connected to any centralized energy supply system. The Law sets deadlines for the installation of such meters with respect to different categories of buildings and structures. The owners of buildings and structures already in use as of the effective date of the Law, and which require energy resources for their operation (including, but not limited to, temporary structures), are to ensure that water, natural gas, heat, and electric power meters are installed and put into operation by January 1, 2011. The same requirement with respect to apartment buildings and other residential buildings connected to centralized networks is to be fulfilled by January 1, 2012.

### 4) incentives for energy savings in apartment buildings

Requirements applicable to the common property of apartment buildings' co-owners are to include ones relating to saving energy and increasing energy efficiency to the extent determined by the executive authorities of the Russian Federation's constituent territories. The Law places responsibility for compliance on the persons responsible for the maintenance of an apartment building or the owners of premises in such building (if they manage the building directly). The owners of premises in the apartment building are to bear the related costs. The changes made by the Law in the Administrative Code provide for administrative penalties on the persons responsible for the maintenance of apartment buildings for failure to implement compulsory energy saving and energy efficiency increase measures with respect to the common facilities in such buildings.

The Law also obliges companies supplying apartment buildings with energy resources to propose (on the basis of public contracts, at least once a year) relevant measures aimed at saving resources so supplied and at increasing the efficiency of their consumption.

## 3. Energy audit

### 1) targets and purposes

The Law allows energy audits to be undertaken with respect to products, buildings, structures, and technological processes, as well as legal entities and individual entrepreneurs, with a view to ascertaining amounts of energy resources used, and gauging energy efficiency and the potential for energy savings and energy efficiency increases, as well as planning and estimating supportive measures.

Only members of self-regulatory organizations may carry out energy audits. The Law envisages certain requirements to be met by such organizations.

## 2) voluntary and mandatory energy audits

As a general rule, energy audits are voluntary. But the Law also lists organizations subject to mandatory inspections of this kind, including, inter alia, the following:

- (a) organizations that produce, generate, and/or transport water, natural gas, heat, or electric power, produce natural gas, oil, or coal, manufacture oil products, process natural gas, refine crude oil, or transport petroleum and oil products;
- (b) organizations whose total expenses on consumption of natural gas, diesel and other fuel, residual fuel, heat, coal, and electric power exceed RUR 10 million per calendar year; and
- (c) organizations engaged in “regulated activities”.

Persons subject to mandatory energy auditing are to have the first such audit to be arranged and conducted by December 31, 2012, with subsequent audits to take place at least once every five years.

## 3) energy passports

The findings of an energy audit are to be recorded in an “energy passport”. Self-regulatory organizations are to send copies of mandatory audit energy passports to the duly authorized state authority. Subject to Russian commercial secrecy legislation, the latter may request from the self-regulatory organizations energy passports executed upon the results of voluntary energy audits. The data contained in the passports is subject to systematization, analysis, and use by the duly authorized state authority.

## 4. Energy service contracts

The Law introduces a new type of civil-law agreement - the energy service contract. The contractor under this kind of arrangement undertakes to take steps aimed at energy savings by the customer and increasing efficiency of energy resource consumption. The Civil Code of the Russian Federation (the “Civil Code”) provides no regulation for such contracts, while the Law itself offers special regulation for only some of their aspects, so that in the remainder the parties to an energy service contract are free to agree upon its terms and conditions subject to the Civil Code’s general provisions on contracts.

The Law defines the following terms and conditions of an energy service contract as material:

- (a) the extent of energy savings to be achieved by the contractor;
- (b) the term of the contract, which may not be shorter than the period necessary to achieve such savings; and
- (c) such other obligatory conditions as are required for energy service contracts by the applicable legislation of the Russian Federation.

A contract price does not constitute a material condition of an energy service contract.

The Law stipulates that apart from the execution of separate energy service contracts, the latter's conditions may be included, inter alia, in agreements for the sale and purchase, supply, and transfer of energy resources (other than natural gas).

Special aspects concerning the execution of state and municipal energy service contracts (including, but not limited to, the execution and pricing procedures) are envisaged by the Russian budgetary legislation and that on the placement of state and municipal orders (upon being restated by the Law).

## 5. Energy-saving programs

Organizations with state or municipal equity participation and those engaged in regulated activities (i.e., such activities as are maintained by natural monopolies and utility suppliers subject to price and tariff regulation) are mandated, by May 15, 2010, to approve energy-saving and energy efficiency programs for their subsequent implementation. Such programs should set relevant targets, specify related measures, and detail anticipated results (in volume and value), among them economic benefits.

Such programs for organizations carrying out regulated activities shall be subject to the requirements to be set forth by duly authorized state authorities at the federal, regional, and local levels (depending on the authorities regulating the prices and tariffs applicable to the goods and services on offer from the organizations concerned) pursuant to the relevant rules to be established by the Russian Government.

## 6. Energy efficiency and government procurement orders

The Law institutionalizes a principle whereby procurement orders necessary to meet state or municipal needs should be placed with due regard for the energy efficiency regulations established by the duly authorized state authority and applicable to the respective goods, work, and services. Such regulations shall specify, inter alia:

- (a) the types and categories of the goods, work, and services subject to the relevant requirements;
- (b) the energy efficiency class under which such goods, work, and services must fall; and
- (c) requirements as to their characteristics and parameters, which bear upon the amounts of energy resources used.

The regulations may prohibit or restrict the placement of such procurement orders for goods, work, or services as may result in any unproductive use of energy resources.

## 7. Encouragement of energy-saving technologies

One of the aspects of the governmental regulation of energy saving and energy efficiency lies in the encouragement of energy-saving technologies, including, but not limited to the use of secondary energy resources and renewable energy sources. State programs aimed at energy savings and energy efficiency increases are expected to set such targets as the number of facilities relying on secondary energy resources or renewable energy sources for their energy supplies.

The Law provides for the following taxation and other economic mechanisms meant to encourage the use of energy-saving technologies:

### 1) investment tax credits

The Law broadens the range of grounds that may be invoked to seek an investment tax credit. They now include:

- (a) R&D or modernization efforts to upgrade the applicant's own production facilities in terms of higher energy efficiency in the manufacture of goods, the performance of work, and the provision of services; and
- (b) the applicant's investments in the creation of assets falling under the highest energy efficiency class, among them apartment buildings, or objects belonging to renewable energy sources, or representing heat or electric power generating facilities with an efficiency output of more than 57%, or other objects or technologies characterized by high energy efficiency as per the list approved by the Russian Government.

### 2) depreciation ratio

Taxpayers may increase the basic depreciation rate by a special ratio (not exceeding two) with respect to either fixed assets featuring high energy efficiency as per the list developed by the Russian Government, or to assets having a high energy efficiency class.

### 3) benefits for organizations engaged in regulated activities

Organizations engaged in regulated activities relating to transmitting energy resources are entitled for a period of no more than five years:

- (a) to gross-up their proceeds to be taken into account during the fixing of prices and tariffs for their services by the amount of expenses incurred in actions aimed at energy resource losses reduction; or
- (b) to retain the economies obtained through the implementation of energy-saving measures (including reduction of energy resource transmission-related losses).

## 8. Information support for the energy-saving system

The Law provides for a variety of measures of informational support for activities related to energy savings and energy efficiency increases. To the extent concerning state authorities, these include primarily efforts to establish a state information system on energy savings and energy

efficiency increases, relevant social advertising, etc. Suppliers of energy to consumers are obliged to regularly inform the latter (through diverse channels, among them the Internet) on ways to save energy resources and use them more efficiently.

Legal entities are now also required to have the explanatory notes accompanying their annual financial statements to indicate total expenses on energy resources used over the respective calendar year. The Law provides for further amendments to the applicable legislation on joint stock companies so as to set a requirement to include in annual reports information on the amounts of each type of energy resource used over the reporting calendar year.

## II. Administrative liability

The Law's changes to the Administrative Code add a number of offenses related to saving energy and energy efficiency increases. Accountability will be introduced, for example, for product sales violating the requirements to disclose information on their energy efficiency class, failure to observe energy efficiency requirements during the design, construction, reconstruction, and overhauling of buildings and other structures, to equip such properties with required energy resource meters, to undergo mandatory energy audits, etc. The penalties are to include heavy fines, which may in certain cases be accompanied by confiscation of goods destined for circulation in breach of the applicable energy-saving and energy efficiency increase legislation.

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## Additional Notes

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