

Client Alert

LAW ON FUNDAMENTAL PRINCIPLES OF STATE REGULATION OF TRADING ACTIVITIES IN THE RUSSIAN FEDERATION

January 2010

On 28 December 2009, the Russian President signed the Federal Law on Fundamental Principles of State Regulation of Trading Activities in the Russian Federation (the "Law") that had been actively disputed for several months. As well as legislating on other issues, the Law introduces the "rules of the game" for retailers and suppliers of food products¹, and aims to create clear procedures for small and medium-size suppliers to sell food products through entities involved in trading activities, whether wholesalers or retailers (the "retailers").

Disclosure Requirements

The Law imposes disclosure obligations on both suppliers of food products and retailers operating a chain². Retailers operating a chain are obliged to disclose information on the process of selection of the suppliers of food products, as well as on the terms and conditions of the supply agreements on the internet, or provide such information free of charge within 14 days of the receipt of the respective inquiry. Similarly, suppliers of food products have an obligation to provide information on the process of selection of counterparties under the supply agreement, as well as its terms and conditions.

Volume Premium and Other Incentive Payments

The amount of the volume premium must not exceed 10% of the price of the food products purchased, subject to the restriction that no volume premium may be paid in connection with the socially important food products listed by the Government of the Russian Federation.

Agreements for supply of food products may not include any provisions on incentive payments to the retailer, other than in relation to the volume premium described above.

Term of Payment

The Law imposes strict rules as regards the term of payment for food products depending on the shelf-life period, namely:

- for food products with less than 10 days' shelf life period the payment shall be made within 10 business days;
- for food products with 10 to 30 days' shelf life period – no later than within 30 calendar days; and
- for food products with more than 30 days' shelf life period and for alcohol products produced on the territory of the Russian Federation – no later than 45 calendar days

from the day of acceptance of the products by the retailer, provided that the term of payment may be extended for any period during which the supplier fails to submit the documents required in connection with the supply of products by law, or as required by the terms of the supply agreement.

Marketing, Advertising and Other Services

Whereas previously, agreements for supply of food products could include provisions on rendering marketing, advertising and other services to the suppliers, these may no longer form part of agreements for supply of food products and shall instead be included in services agreements. In addition, an agreement for supply of food products may not include conditions requiring a supplier to enter into such a services agreement, as described in this paragraph.

Mobile and Temporary Trading Facilities

- The allocation of "non-stationary" (including such things as mobile or temporary) trading facilities on

¹ Defined by Law as: natural and processed nutrition products, bottled drinking water, alcohol products, beer and beer-based beverages, non-alcohol beverages, chewing gum, food additives and biologically active additives.

² Defined by Law as: two or more trading facilities under common management or using the same branding or name.

state (municipal) land or in state (municipal) buildings/facilities can be made only in line with the allocation scheme approved by the Government of the Russian Federation, or the authorized regional executive body. Such scheme shall be published and made available on the internet.

- The scheme shall ensure that 65% of the total number of “non-stationary” trading facilities shall be allocated to small/medium size businesses.

Price Regulation

In the event that within 30 calendar days (in succession) the price for certain socially important food products (listed by the Government) increases by 30% or more, the Government has the right to set a maximum price for such products for a period of no more than 90 calendar days.

Miscellaneous

- Under the Law, no contractual prohibition of assignment under an agreement for supply of food products, or penalties for such assignment, shall be allowed.
- A retail chain selling food products for personal consumption (not a wholesaler) which has a market share (in terms of sales volume for the preceding financial year) within a region, an administrative district, Federal City of Moscow and St-Petersburg, municipal region or city region, exceeding 25%, may not acquire or rent any additional premises for conducting trading activities in that region. The prohibition extends to the construction of new premises, and the participation in auctions conducted for the purpose of the acquisition of new premises.
- Retailers of food products operating a chain and suppliers supplying the food products to them are further prohibited by the Law from:
 - a) engaging in any form of discrimination, including obstacles for entering the market or violation of the price determination procedure;
 - b) imposing the following conditions or restrictions on the counterparty:
 - (i) restrictions on entering into agreements with other market participants on similar or other conditions;
 - (ii) liability for failure to supply products on terms more favourable than the terms provided to other participants;
 - (iii) disclosure of information on the agreements executed with other market participants;
 - (iv) payment of “entry” fees;
 - (v) payment for changing the range of food products;
 - (vi) price discounts by the supplier to the effect that the price (after inclusion of the margin) would not

- exceed the minimum sales price set by other entities conducting similar activities;
 - (vii) reimbursement of damages related to loss or damage of food products after the title has been transferred unless such damages occurred through the fault of the supplier;
 - (viii) reimbursement of costs not related to the performance of the supply agreement and further sale of specified products;
 - (ix) return of the unsold products to the supplier, unless such return is allowed by the law of the Russian Federation;
 - (x) other conditions if such conditions have elements described in points (i) through (ix) above;
- c) Wholesaling under commission (agency) agreements or mixed agreements which have elements of commission (agency).

- The Law provides for the creation of a trade register to be operated by the state authorities, which will include information on retailers and suppliers (but not the producers) of products.

The Law will come into force from 1 February 2010, and within 180 days of that date all agreements for supply of food products previously entered into need to be brought into compliance with its provisions. The Law is quite detailed but unclear in some respects. We would be pleased to assist you with the review of any of your agreements for supply of food products which may be affected.

If you have any questions on the matters referred to in this Alert, please do not hesitate to contact CMS Partner *Leonid Zubarev* or Senior Associate *Denis Nazarevskiy* at +7 (495) 786 4000 or your regular contact at CMS.

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