

# Study Manual on the Bases of Russian Law



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By

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# PREFACE

## INTRODUCTION TO THE MANUAL

### **Aim of the Manual**

The objective of this manual is to meet the needs of professionals, teachers and students in comprehensive study material on bases of Russian Law.

The intention of the author is that after reading the material, people from different backgrounds will understand the basic principles of Russian Civil & Corporate Law and how such principles interact. The author considers necessary to set as well a Chapter on Essential Elements of the Russian Legal System to give an overall and profound understanding of the process of the creation of business entities in the legal environment of the Russian Federation.

After reading the book you will be able to:

- Analyse and evaluate situations from a legal perspective
- Identify the essential elements of the Russian legal system and the main sources of law and explain their operations
- Demonstrate the ability to apply to an appropriate court in the Russian Federation
- Understand and apply Russian contractual law
- Distinguish between alternative forms and constitutions of business organisations
- Explain the main legal principles relating to the exercise by foreign individuals and legal entities of their rights in the sphere of Russian business law in the Russian Federation
- Recognise the legal implications relating to companies in difficulty or in crisis
- Demonstrate an understanding of governance and ethical issues relating to business
- Explain the nature of, and legal control over money laundering.

The manual is directed mainly to undergraduate and postgraduate law students, as well as to Russian and foreign lawyers, heads of legal entities, financial directors, chief accountants and auditors using English, and to any person interested in Russian Law.

The author has tried to state the law accurately as of 1 October 2014, though a number of changes known to be taking effect later in 2014 have been included in the text.

The author would appreciate any suggestions and comments on the manual, which you can e-mail directly to [a.shashkova@inno.mgimo.ru](mailto:a.shashkova@inno.mgimo.ru).

### **List of Abbreviations for Major Terms Used**

|                  |   |
|------------------|---|
| BD               | Board of Directors (Supervisory Board)                |
| CEO              | Chief Executive Officer (Sole Executive Body)         |
| GM               | General Meeting of Shareholders or Participants       |
| J-SC             | Joint-Stock Company (Company Limited by Shares)       |
| LLC              | Limited Liability Company (Company Limited by Stakes) |
| Management Board | Collective Executive Body                             |
| RF               | Russian Federation                                    |





# CHAPTER ONE

## ESSENTIAL ELEMENTS OF THE RUSSIAN LEGAL SYSTEM

### **Part I. A Definition of Law**

Law has been defined as the written and unwritten body of rules, derived from custom, formal enactment and judicial decisions, which are recognised as binding on persons who constitute a community or state, so that they will be imposed upon and enforced among those persons by appropriate sanctions. Russian law can be classified as national (domestic) or international, public or private, criminal or civil.

During the last 20 years rapid legal, economic and political reforms were implemented by federal and municipal bodies of the Russian Federation. However, the legal, economic and political systems in Russia were greatly influenced by seventy years of socialism. Communism lasted longer in Russia than anywhere else, and influenced it more completely. Moreover, in contrast to the Czech Republic or Poland with their traditions of free-market democracy, Russia was never such a democracy, and had patterns of communal ownership long before 1917.

The President, the Federal Assembly, the various Federal Ministries, and regional and municipal government authorities have enacted massive amounts of legislation and regulations since the dissolution of the USSR, some of which are inconsistent with or contradict legislation issued by other Russian governmental entities. Many laws and decrees are also vague and unclear, permitting varied interpretations by Russian authorities. Legislation in the RF has been implemented vigorously, partially or not at all, depending on the nature of the legislation and on the political leanings of government officials charged with its implementation. Disputes exist among various Ministries as to which Ministry is empowered to regulate particular areas. In short, the study of the legal framework in Russia is a perpetual and demanding task.

## **Branches of Law**

Juridical provisions composing the laws of the RF are tightly interconnected, conformed and compose a single system. This system can be subdivided on large component parts; the law branches.

A branch of law is a separate complex within a major system of similar legal norms and legal institutions regulating one field of relations.

Strictly speaking, Russia has constitutional, administrative, civil and criminal branches of law. However, as the business turnover (negotiation) grows the list of the major branches becomes longer.

The law system in Russia includes the following major branches:

- Constitutional law
- Administrative law
- Financial law
- Customs law
- Civil law
- Business law
- Corporate law
- Family law
- Labour law
- Land law
- Housing law
- Ecological law
- Criminal law
- Civil procedural law
- Criminal procedural law
- Criminal executive law
- Arbitrazh procedural law.

A branch may be divided into smaller complexes - sub-branches such as tax law deriving from financial law, or immovable law deriving from civil law, etc.

## **Part II. Classification of Laws**

### **Public and Private Law**

There are two major areas within the Russian legal system:

- Public law
- Private law.

Public law regulates relations between an individual and the state. These are relations of power-subordination. Constitutional, administrative, financial, criminal, criminal procedural law and criminal executive law are parts of these relations.

Private law regulates relations between subjects of law on the basis of their mutual obligations, where the participants of relations are equal. These relations include civil, labour, family and other branches of law.

The following characteristics are typical for private law: the object of private law is relations based on legal equality of participants, autonomy of their will and their proprietary independence (possessing set-apart property). Application of “residuary” norms is typical for private legal relations (for example, the Civil Code stipulates that parties may conclude a contract either in the form set by law and/or other legal acts or in other form).

Civil law is one of the branches of private law. The Civil Code stipulates legal foundations of private law:

- Equality of participants to proprietary relations
- Inviolability of property
- Contractual freedom
- Inadmissible arbitrary interference into private affairs (Privacy of contract)
- Necessity to freely exercise civil rights and guarantee their protection in court.

## **Substantive and Procedural Law**

Substantive law regulates social relations directly. Examples of branches of substantive law are the following:

- Civil law
- Criminal law
- Administrative law.

Procedural law regulates the order and the cover of the law regulation of substantive branches. Examples of procedural branches are the following:

- Civil procedural law
- Criminal procedural law
- Arbitrazh procedural law.

## **Civil and Criminal Law**

An important distinction must be drawn between the areas of criminal and civil law. A crime is any conduct which is prohibited by law. Criminal prosecutions are brought by the state. The state prosecutes because it is notionally the community as a whole which suffers when criminal law is infringed.

Civil proceedings have as their object the resolution of disputes between individuals and the compensation of those who have been wronged under the civil law. The main areas of civil litigation comprise company law, the law of contracts, torts, labour and family law.

### **A Tort**

A tort has been defined as a civil wrong arising from a breach of duty created not by agreement but by operation of law. A civil wrong is one which gives rise to civil proceedings as opposed to a criminal prosecution. It is defined as a civil wrong (other than a breach of contract or a breach of trust) for which the normal remedy is an action for damages.

Attempts are often made to define the tort by contrasting it with other distinct areas of law such as contract law. A contract exists where there has been an agreement between parties and where the parties intended to create legal relations and have supported their agreement with consideration. The contractual relationship is denoted by the concept of privity, which means that only a party to a contract or interested person can sue on it. The law of torts exists outside the confines of the doctrine of privity of contract, and therefore a contract is in no way a prerequisite for a successful tort action. However, a breach of contract may also amount to a tortious act, for example the selling of a car with faulty brakes. A plaintiff is free to sue for breach of contract and in tort in the same set of proceedings.

## **Part III. Sources of Law**

A source of law serves as the basis for deciding (ruling) on juridical matters.

Russian law derives its validity from the Constitution of the RF. The Russian legal system is broadly similar to the legal systems which exist in most European countries, whether part of the E.U. or otherwise.

## **The Russian Law Family**

Russia belongs to “Romano-German” law family. Usually “Romano-German” law family countries are called continental law countries. Russia is a civil law jurisdiction. In a civil law jurisdiction an attempt is made to codify or put into legislative form all laws applicable in that country. The laws are contained within the statutes passed by parliament. In this way we may distinguish our legal system from those which exist in the United Kingdom, Ireland, the United States of America and other “Anglo-Saxon” law family countries. These countries are common law jurisdictions and the judicial precedent is the most important source of law in such countries. Usually “Anglo-Saxon” law family countries are called precedent law countries.

## **The Sources of Russian Law**

The main sources of Russian Law are the following:

- Statute Law
- The acts of Executive Bodies
- International Law
- Customs of Business Turnover
- Judicial Precedent / Rulings of the Constitutional Court of the RF.

## **Overview of the Statute Law of the Russian Federation (RF)**

The statute law is the main source of Russian law. The structure of the statute law in the RF is very complex, because Russia is a federal state and has statute law both in the RF and in the Subjects of the RF. The structure of the statute law is the following:

- The Constitution
- The Constitutions and the Charters of the Subjects of the RF
- Federal constitutional laws of the RF
- Federal laws of the RF
- Laws of the Subjects of the RF
- Laws of the former USSR and RSFSR.

## **The Constitution of the RF**

The Constitution of the RF is the supreme normative legal act, holding the highest juridical power (establishing general principles and regulations), superiority and direct action on Russian territory. All laws

and other legal acts adopted in Russia must comply with the Constitution. Thus, the Constitution of the RF has the following notions:

- The highest juridical power
- Superiority
- Direct action on Russian territory.

The RF enacted the current Constitution on 12 December 1993. The Russian Constitution, approved by state referendum, is the basis of Russian constitutional law, and the most important source of domestic law. The Constitution provides for a federal state and introduces the concept of the separation of powers. The Constitution provides for the separation of executive, legislative and judicial power. The legislature is structured as a parliament. The main legislative body, the Federal Assembly, is composed of two chambers – the Federation Council (the upper house) and the State Duma (the lower house). The Constitution deals with such matters as the national territory, the President, the legislature, the executive, the judiciary of the RF and, of course, the fundamental rights, which are contained in the 2<sup>nd</sup> chapter of the Constitution.

It is commonly said that the executive branch consists of the President, elected directly by the people for a six-year term, and the Government. However, the President of the RF remains separate to the executive power. The President is the guarantor of the Constitution<sup>1</sup> and possesses some executive, legislative and judicial powers.

The Government is responsible before the President and is headed by the Head of the Government (unofficially called the Prime-Minister), who is nominated by the President and confirmed by the State Duma.

### **Amendments to the Constitution**

The Russian Constitution is rigid when considering the complex procedure of adopting Constitutional amendments. The Constitution itself, and the Law on Amendments to the Constitution establish the procedure and conditions for making, adopting and approving amendments to chapters 3-8 of the Constitution of the RF, as well as their entry into force. The Constitution cannot be modified by the State Duma alone.

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<sup>1</sup> Constitution, Article 80.2.

According to the Amendments to the Constitution of the RF the terms of the President of the RF and of the State Duma of the RF were increased from 4 years for each to six and five years respectively<sup>2</sup>.

## **The Statute Law**

A “statute” denotes that a body of law is enacted by the parliamentary process. Statutes are, as a source of law, subject only to the Constitution and always prevail in the event of a conflict with other normative acts of the RF.

Laws possess the following characteristics:

- They are adopted by representative bodies (the Federal Assembly) or by public referendum (source of adoption)
- The law is adopted in accordance with a certain procedure which ensures the adoption of laws regarding significant issues only, and thorough consideration of laws prior to their adoption (specific order of adoption)
- Laws hold supreme power in comparison to other normative legal acts (legal supremacy).

## **Federal Constitutional Laws**

Laws of the RF are divided into:

- Federal constitutional laws and,
- Federal laws (not attached to the constitutional laws).

Federal constitutional laws cover issues that are directly foreseen by the Constitution. Federal constitutional laws are enacted in the most important areas of constitutional law, such as referendum, government and human rights. They include the following laws: Law on Referendum, Law on Government, Law on Judicial System, Law on Constitutional Court, etc. Changes to the above laws would also require the adoption of a federal constitutional law, e.g., the specialised Arbitrazh court – the Intellectual Rights court was introduced by federal constitutional law<sup>3</sup>.

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<sup>2</sup> Law of the RF on Amendments to the Constitution of the RF No.6-FKZ, dated 30 December 2008.

<sup>3</sup> Federal Constitutional Law No.4-FKZ “On Introduction of Amendments to the Federal Constitutional Law: ‘On the Judicial System of the RF’”.

According to the Constitution, constitutional laws enjoy a higher status than ordinary statutes, as it provides that federal laws may not contravene federal constitutional laws<sup>4</sup>.

The procedure for adoption of federal constitutional laws is more complex than the procedure for adoption of federal laws; federal constitutional laws require the adoption of the qualified majority of both the State Duma and the Federation Council.

Federal constitutional laws differ from federal laws on the following criteria:

- Legal force
- Competence
- Procedure for adoption
- Powers of the President on application of its suspensive veto.

## **Federal Laws**

Federal laws are adopted by the supreme representative body – by the Federal Assembly. Laws can also be adopted directly by the people through referendum.

Among the laws one may emphasise codified laws (e.g. the Civil Code, the Tax Code, the Criminal Code, etc). Norms of other legislative acts of the RF shall comply with the Civil Code<sup>5</sup>. However, in the case of a contradiction between a Code and a special federal law, a special federal law shall prevail.

The RF has enacted a Civil Code, which is intended to repeal most Soviet era civil law rules and establish a market-oriented system. Part I of the Civil Code, which deals with general principles of civil law, property rights and rules, governing obligations and contract, entered into force on 1 January 1995. Part II, which deals with rules for specific types of contracts and torts came into force on 1 May 1996. Part III, which deals with inheritance and private international law, came into force on 1 March 2002. Part IV, which deals with intellectual property, has been in force from 1 January 2008. Drastic changes to the Civil Code came into force on 1 September 2013.

## **Federal Laws and Laws of the Subjects of the RF**

Russia is a federal state and laws adopted in it include:

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<sup>4</sup> Constitution, Article 76.3.

<sup>5</sup> Civil Code, Article 3.2.



- Federal laws (adopted by the Federal Assembly) and
- Laws of the Subjects of the RF (adopted by the bodies of the legislative power of the Subjects of the RF).

Jurisdiction of the RF or the Subjects of the RF is divided into:

- Jurisdiction of the RF
- Joint jurisdiction of the RF and the Subjects of the RF and,
- Jurisdiction of the Subjects of the RF.

Laws of the Subjects of the RF are subordinated to the jurisdiction of the RF or the joint jurisdiction of the RF and the Subjects of the RF. Laws of the Subjects of the RF may not contradict federal laws. According to the general rule, in case of contradiction between a federal law and another act adopted in the RF, the federal law has the juridical supremacy<sup>6</sup>. The rule of supremacy provides the unity of the law regulation system in Russia.

Federal laws of the RF, together with the Constitution, hold the supreme power over the entire territory of the RF, and the highest juridical power when compared to other regulatory legal acts adopted in the RF on issues in the exclusive jurisdiction of the RF or in the joint jurisdiction of the RF and its Subjects<sup>7</sup>.

Laws have direct force within the territory of the RF [Constitution, Article 76.1]. Federal laws concerning issues in joint jurisdiction of the RF and the Subjects of the RF are adopted together with laws and other acts of the Subjects of the RF<sup>8</sup>.

## **The Relationship between Statute Law and the Constitution**

The relationship between statute law and the Constitution can be summarised as follows:

- Under Article 125 of the Constitution the President, the State Duma, one-fifth of the members of the Federation Council or deputies of the State Duma, the Government and the Supreme Court of the RF<sup>9</sup>, the bodies of legislative and executive power of the Subjects of the RF can apply to the Constitutional Court<sup>10</sup> with a request concerning compliance of federal laws, normative acts of

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<sup>6</sup> Constitution, Article 76.5.

<sup>7</sup> Constitution, Articles 71, 72.

<sup>8</sup> Constitution, Article 76.2.

<sup>9</sup> <http://www.supcourt.ru/>

<sup>10</sup> <http://www.ksrf.ru/>

the President, of the Federation Council, of the State Duma and of the Government with the Constitution

- Litigants before the Constitutional Court may assert that legislation is unconstitutional.

### **Example**

The Constitutional Court of the RF has found part of Article 446 of the Civil Procedural Code not to be corresponding to the Constitution of the RF and therefore such provision has been abolished<sup>11</sup>.

According to the version in the dispute of the above article, only the real property of a natural person may be recovered by creditors, though mortgaged property may not be. The Ruling of the Constitutional Court of the RF has held the provision concerning specifics of mortgaged property unconstitutional, making the recovery of such property possible not only by banks, but by ordinary creditors as well.

## **Stages of the Legislation Process**

### **The Legislature**

The legislature is the function which initiates legislation on behalf of the people. Like most countries, the legislature of the RF comprises two houses: the State Duma and the Federation Council, through which most legislation is debated and enacted, all within the overall framework of the Constitution and international treaties to which the State has committed itself.

As the Russian system is highly dependent on statute law, the legislature has a central role in creating law. However, law making does not begin and end with the actions of these government organs. The system permits legislation to be enacted through a hierarchical structure that includes regional governments and public and municipal bodies that are enabled to create legislation within their respective terms of reference.

Law cannot always evolve at the pace required to keep up with changes in society. The decision making of government and subordinate bodies is complemented by the powers of the President to make decrees and orders, and to a limited degree the application of analogy in courts to resolve legal dilemmas or lacunas.

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<sup>11</sup> Ruling of the Constitutional Court of the RF No.11-P, dated 14 May 2012.

## **Which State Body Adopts Federal Laws**

Before a piece of legislation becomes a law it is known as a draft law. Federal laws are adopted by the Federal Assembly: the State Duma and the Federation Council.

### **Notes**

Draft laws and discussions thereof shall be published at [www.regulation.gov.ru](http://www.regulation.gov.ru).

## **The Legislative Initiative**

The legislative initiative is a right to submit draft laws for the consideration of the State Duma. According to the Constitution the right of the legislative initiative belongs to:

- The State Duma
- Deputies of the State Duma
- The Federation Council
- Members of the Federation Council
- The President of the RF
- The Government of the RF
- The legislative (representative) bodies of the Subjects of the RF
- The superior courts (the Constitutional Court, the Supreme Court) on issues concerning their jurisdiction<sup>12</sup>.

## **Preliminary Consideration**

Preliminary consideration includes forwarding the draft law to an appropriate committee of the State Duma. At the same time, the draft law is forwarded to commissions, committees and deputies associations, to the President, to the Government, etc.

## **Readings in the State Duma**

First reading in the State Duma means the discussion of the concept of the draft law. The major provisions of the draft law are considered and assessed. On the basis of the results of the first reading the State Duma may decline the draft law or accept it. The State Duma may also accept the law in the first reading and continue working with it. In this case a special

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<sup>12</sup> Constitution, Article 104.

committee in charge is appointed to study and summarise the amendments. At the beginning of the second reading the work of the committee is discussed. The draft law may be adopted at the second reading, and then it is forwarded to the committee in charge in order to eliminate possible discrepancies with participation of the Legal Department of the State Duma. In the majority of cases the draft law is adopted in the third reading.

### **Adoption of the Law**

A federal law is deemed adopted if more than half of the deputies of the State Duma (at least 226 deputies) have voted for it<sup>13</sup>. When a draft law is passed by the State Duma it is sent to the Federation Council where it is further considered and may be amended. It has to be approved by a majority of the members of the Federation Council within 14 days.

Draft laws on introduction or abolition of taxes, on exemption from tax payment, on issuance of state loans, on changes in the financial obligations of the RF and other draft laws that stipulate expenses covered by the federal budget may be submitted for the State Duma's consideration after the Government's conclusion (approval) exclusively.

### **The Consequences of Non-Consideration of the Draft Law by the Federation Council within 14 Days**

Within five days after a law is adopted by the State Duma, it is to be transferred to the Federation Council for further consideration and approval. If the Federation Council does not consider the draft law within 14 days and the draft law is not subject to the compulsory consideration by the Federation Council, the draft law is deemed to be automatically approved by the Federation Council.

Federal laws adopted by the State Duma shall be considered by the Federation Council on a mandatory basis if such laws deal with the issues of:

- The federal budget
- Federal taxes and levies
- Financial, monetary, credit and customs regulations and money emission
- Ratification and denunciation of international treaties of the RF

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<sup>13</sup> Article 95.3 of the Constitution states that the State Duma consists of 450 deputies.

- The status and protection of the state border of the RF
- War and peace.

Special stage - eliminating discrepancies between the Federation Council and the State Duma (a conciliatory commission is set up in the event of the Federation Council declining draft laws approved by the State Duma).

### **Promulgation (Signing) of the Law by the President of the RF**

The draft law is then sent to the President who must sign it within 14 days, unless the President uses his suspensive veto rights to decline the law in case of disagreement. In case of a decline, the State Duma examines that law again, and either amends it according to the remarks of the President, or leaves the law in its old version. In the second case, the State Duma may override the veto of the President, if not less than two-thirds of all the members of both the State Duma and the Federation Council vote for the adoption of the law. Afterwards, the President must sign the federal law within seven days<sup>14</sup>.

The date of adoption of law is the date of its promulgation by the President of the RF.

### **Does the President Have Veto Rights to Decline a Federal Constitutional Law?**

Article 108 of the Constitution provides that, after adoption of the federal constitutional law by at least the two-thirds of the State Duma and three-quarters of the Federation Council, the President signs the federal constitutional law within 14 days. Therefore, no suspensive veto rights may be used by the President in this case.

### **Official Publication and Enactment**

The laws are published within seven days from the date they are signed by the President of the RF<sup>15</sup>.

The law must be published in one of the official newspapers of the RF: “Rossiyskaya Gazeta”, “Sobranie Zakonodatelstva”. The general rule is that the law enters into force 10 days after its publication in the official

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<sup>14</sup> Constitution, Article 107.3.

<sup>15</sup> Law on Entering into Force of Federal Legal Acts, Article 3.

newspaper or magazine of the RF<sup>16</sup>. The statute itself may provide the term when it enters into force.

### **Notes**

The official publication shall also be considered the first publication at the “Official Internet Portal of Legal Information” [www.pravo.gov.ru](http://www.pravo.gov.ru)<sup>17</sup>. Within 10 days after adoption of the acts they shall be posted on the internet.

### **Validity of the Normative Acts in Time**

Unless the statute contains express words to the contrary, the following presumptions apply:

- A statute does not alter the existing law nor repeal other statutes
- By general rule legislative acts are not retroactive and shall be applied towards the relations, which had arisen after they were put into force.

The operation of law shall be extended toward the relations, which had arisen before it was put into force, only in cases, directly provided for by law.

### **Example**

Article 10 of the Criminal Code states that a criminal law which excludes a crime, absolves the criminal liability for a crime or otherwise improves the conditions of the person who has committed a crime, shall have retroactive effect.

Regarding to relations which had arisen before the statute was put into force, the most recent normative act shall be applied towards the rights and duties which have arisen after its being put into force.

There are certain situations when a statute can have a retroactive effect:

- When a statute benefits all the people or the parties involved and does not infringe interests of any other third parties
- When a statute simply interprets (construes) other statutes and does not infringe rights of any other third parties.

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<sup>16</sup> Law on Entering into Force of Federal Legal Acts, Article 6.

<sup>17</sup> Decree of the President of the RF No.1505, dated 17 November 2011.

## General Principles of Law Implementation

The usefulness and necessity of laws reveal themselves solely in the course of the implementation of those laws; their embodiment. Implementation of law provisions is the practical execution of instructions included in those provisions, when a rule, displayed in a law provision in general form, is embodied in people's deeds. The forms of law implementation are the following:

- **Accomplishment** (use)

Accomplishment of law is active realisation by the subjects (e.g. individuals, legal entities, state bodies) of opportunities included in the law. It is generally accepted in Russian law that actions that do not cause harm to others and are not forbidden by law, are permitted. Some laws prescribe the actions that individuals and legal entities may take and the manner of accomplishing them. Accomplishment of law is restricted by rights of other subjects of civil turnover<sup>18</sup>.

### Example

An owner of property may sell it, present it or bequeath it, etc. An owner of property may even destroy the property, but only if it does not violate rights and lawful interests of other third parties.

State bodies, accomplishing their rights, simultaneously execute their obligations (e.g. courts when practicing justice, tax bodies when executing tax examinations).

- **Execution**

This term refers to the discharge of the legal obligations of individuals and legal entities as laid down in legislation. Execution means the embodiment of obligatory provisions (e.g. fulfilment by individuals of their constitutional obligations, such as tax payment, obligatory military service, etc). Another example is the fulfilment of obligatory returns in the form of statutory records, including registration of births, marriages and deaths or formation or reorganisation of companies.

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<sup>18</sup> Article 17.3 of the Constitution states that the execution of one's rights and liberties shall not infringe the rights and liberties of another person.

- **Observance**

This term refers to compliance with the limits laid down in relation to the activities of individuals and legal entities. Observance is the realisation of the forbidding provisions or non-execution of actions that may inflict harm on an individual, society or the RF. It is a more negative concept in that it involves not taking certain actions that are forbidden by law. Prohibitions may be set, for example, by provisions of criminal or administrative law. The restrictions on the active capacity of minors is an example of observance. Parties to most types of contracts shall observe certain legal provisions, and even outside the scope of contract law they can be held accountable if by their actions they inflict loss or harm on others. Legal entities are also constrained by their own constituent documents, which under the provisions of law must lay down specified parameters within which they may act.

**Example**

A person keeping from crossing the road when red lights are on.

- **Enforcement**

A special form of law realisation is its enforcement. A peculiarity of the given form is that it is executed by the competent bodies and is aimed at a restricted number of persons or one person. An act of law enforcement is an individual act of an authorised body of power that is based on norms and determines particular rights, duties or liability. Non-observance of such acts is punished. The courts are integral players in enforcing the law, such as in matters requiring the resolution of contractual disputes and confirmation of the entitlements of citizens (such as payments from the State or from their employer).

Legal entities incur certain obligations in the course of economic activity. One example is the enforcement of the rights of creditors when the sums due to them become payable, such as on maturity of the debt, on default by the debtor, on reorganisation or insolvency.

Major requirements to such acts are the following:

- Strict compliance with legal provisions
- An act must be issued within the limits of powers of the law enforcement body or an official
- An act must be substantiated (the court bailiff takes the decision on institution of the executory process, which shall be then approved by the senior court bailiff)



- An act must have all the required characteristics of an official document.

Law enforcement acts are not sources of law since they do not contain any general rules of conduct but ensure the application of certain law provisions with respect to a particular case or person. Unlike normative legal acts, acts of law enforcement are supposed to be applied once only.

Law enforcement is required in different cases, when implementation of law is impossible without the interference of the state, its bodies or officials, such as:

- Relations in the sphere of the state management (e.g. appointment of a Federal Minister)
- Relations in the area of distribution of social benefits (e.g. pensions or state welfare payments)
- Relations arising in solving law disputes (e.g. the court's decision)
- Relations arising under juridical prosecuting, imposing and executing the punishment (e.g. the ruling of the criminal investigator to initiate a criminal case).

### **A Gap in a Law (A Law Lacuna)**

A law-enforcement process is also executed in case of a gap in a law. A gap in a law is the absence of a necessary provision regulating public relations that are to be regulated by law. A gap in a law arises when the law does not provide a satisfactory reference point for the resolution of an issue. This is inevitable, as the law cannot accommodate every situation that will arise in the future.

A gap in a law can be resolved in several ways. The relevant law-making body can lay down a law specifically to address the situation, thereby removing any ambiguity. This can be done at any level, subject to the powers of the law-making body.

At the very highest level, the President is empowered to issue a decree to eliminate the law lacuna.

Alternatively, the court may apply a provision applicable to a similar situation if appropriate, or resolve the issue with reference to the general meaning and purpose of the legislation as it exists by application of analogy of law or analogy of legislation.

## **Application of Analogy of Law**

If there is no written law, the courts may have to resort to analogy whereby they consider similar circumstances in which a law actually exists.

Alternatively, the court has to consider the existing legislation and apply a decision that is consistent with the purposes and principles of the legislation.

The role of the courts in resolving a law lacuna is quite common in codified legal systems such as that of the RF. This is inevitable, as it is unlikely that the legislative process can ever keep up with the pace of change in the commercial environment and society as a whole.

In this case a gap in a law is eliminated by the application of a law provision, regulating similar relations (such law provision serves as a law basis for the court decision).

### **Example**

In case of a dispute between participants of an LLC on the possibility to vote at the General Participants' meeting by appointing a representative under a power of attorney, the court shall rule under the LLC Law. Due to lack of relevant provisions thereof, the court shall give a judgement under a similar law, e.g. the J-SC Law – application of analogy of law.

## **Application of Analogy of Legislation**

In the absence of a law provision regulating similar relations, the law-enforcer eliminates a gap in a law in accordance with general principles and the meaning of the legislation.

*Analogy of law and analogy of legislation take place in Russian civil law-enforcement practice, but are prohibited in administrative and criminal laws.*

## **Other Normative Legal Acts**

The current situation in the RF is that a law often contains gaps, which executive bodies of the RF issue acts to fill. Both laws and acts of executive bodies of the RF are equally binding as sources of law, but may not contravene the Constitution. On the grounds of, and in the execution of the Civil Code and other laws, legal relations are also regulated by acts of the executive bodies of the RF and the Subjects of the RF, containing norms of civil law.

The hierarchy of normative legal acts in Russia is the following:

- Decrees and Orders of the President of the RF
- Rulings and Orders of the Government of the RF
- Normative acts of the federal executive bodies
- Acts of the bodies of power of the Subjects of the RF
- Normative legal acts of local self-government bodies<sup>19</sup>.

The system of regulatory legal acts of local self-government bodies is relatively independent: local self-government bodies are not included into the system of state bodies of the RF. Such acts are adopted by the municipalities, by the councils and heads of self-government territories (cities and villages), and also by the population directly.

Such acts are obligatory for the population of the territories and organisations located there (e.g. local regulatory act, introducing advertising tax and an advertising tax rate).

### **The Hierarchy of Normative Legal Acts**

As for the legal meaning of the hierarchy of legislative acts, it is the following:

- The lower (from the point of view of hierarchy) legislative acts may be issued by the relevant state bodies for means of implementation of the higher legislative acts and may also contain details of general provisions stipulated in laws, but;
- The lower legislative acts must not contradict the higher ones and in case such contradiction arises the provisions of the higher legislative act should prevail, and the relevant provision of a lower act may be considered invalid.

Thus federal laws shall prevail over laws of the Subjects of the RF and statutes shall prevail over acts of the executive bodies of the RF.

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<sup>19</sup> Local self-government bodies are referred to in certain Articles of the Constitution (Articles 33, 40, 46, etc.). They are not included in the system of state bodies of the RF. Local self-government bodies adopt legal acts within the limits of their powers and with respect to issues of local significance.

## **Conflict of Laws**

### **Law Implementation**

The following rules shall be applied to the implementation of laws:

- In the case of a contradiction between provisions of a general and a specific act of equal levels (e.g., the Civil Code and the Law on Bankruptcy), a specific legal act shall be applied – horizontal conflict of laws
- In the case of a contradiction of normative legal acts issued by bodies of different levels (e.g., a law and a decree of the President of the RF, an instruction of the Tax Service and an order of the Government of the RF), the higher one shall be applied (the hierarchy principle) – vertical conflict of laws
- In the case of a discrepancy between regulatory legal acts issued by one body (e.g. between laws), but on different dates, the most recent normative legal act shall be applied, even it does not stipulate that directly.

## **International Law**

International law may be divided into:

- **Universally recognised principles and norms of international law**

Universally recognised principles and norms of international law are official guidelines and fundamental regulations of international law, admitted by all subjects of international law. Such regulations do not allow deviation. In particular, such regulations concern governments' sovereignty, forceful actions or threat with force, territorial unity of states, inviolability of their borders, peaceful settlement of disputes, non-interference of internal affairs and respect of human rights and freedoms.

- **International treaties of the RF**

The RF has concluded several thousand international treaties concerning a wide range of issues - political, economic, social, etc.

## **Prevailing Force of International Law**

Article 15 of the Constitution states, that the universally recognised principles and norms of international law and the international treaties of the RF form, in conformity with the Constitution, an integral part of the legal system of the RF. International treaties of the RF are directly applied towards legal relations, with the exception of cases in which a corresponding international treaty provides for a special intra-state act to be issued. If an international treaty of the RF stipulates other provisions than those stipulated by the domestic law, the provisions of the international treaty shall prevail.

International treaties have supremacy over federal laws, laws of the Subjects of the RF and other normative legal acts, regardless the date of their adoption – whether before or after an international treaty was adopted.

One of the most important acts of Russian legislation in this area is the Law on International Treaties. It is based on provisions of the Constitution and on universally accepted provisions of contractual law stipulated in “The Vienna Convention on the Treaties between the States and International Organizations and between International Organizations”, dated 21 March 1986, and in “The Vienna Convention on the Law of International Treaties”, dated 23 May 1969.

## **The International Treaties Signed by the USSR**

The Law on International Treaties is also effective with respect to international treaties, with the RF acting as the successor of the USSR<sup>20</sup>.

## **Will the International Treaty Be in Force in the Territory of the RF Automatically after Signing?**

The above notwithstanding, Article 14 of the Law on International Treaties provides that ratification and denunciation of international treaties of the RF must be adopted by consideration of both the State Duma and the Federation Council on a mandatory basis. Article 125 of the Constitution also states that international treaties of the RF may not be enforced and applied if they violate the Constitution.

Therefore, an international treaty of the RF does not come into force before the ratification of such a treaty. Sometimes, the ratification of an international treaty by the Parliament can take years.

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<sup>20</sup> Law on International Treaties, Article 1.3.

**Example**

“The Convention on Prevention of Major Industrial Accidents (Convention No.174)” was signed in Geneva on 22 June 1993, but ratified by federal law only on 30 November 2011<sup>21</sup>.

**The Lawful Custom**

A lawful custom can also be deemed a source of law in the RF. The word ‘custom’ denotes rules of conduct which, by virtue of long usage, have the force of law. A valid custom must eventually be recognised by the state to be obligatory. It must be certain, reasonable and not contrary to statute law. The lawful custom is rarely used in most branches of the Russian legal system. However, the lawful custom is more commonly used in Marine law.

At the same time, Russian law admits and applies customs of business turnover as a source of law in cases where it does not contradict the Russian legislation or terms of contract.

**Example**

Customs value of goods may be assessed under customs of business turnover – similar customs transactions<sup>22</sup>.

**The Judicial Precedent**

A judicial precedent is a decision of a higher court that becomes a model for future decisions of lower courts on similar cases. A given decision acts as an obligatory rule for those judges who examine similar cases in the future. It does not act as a recommendation.

Judicial precedent is one of the major sources of law in Anglo-Saxon law family countries. Romano-German (continental) law family countries, including Russia, reject the judicial precedent as a law source. Although there is no formally developed equivalent to judicial precedent in Russian law, the decisions of the courts are documented and serve as a source of reference for judges presiding over current cases. This is particularly important for the Arbitrazh courts which deal with matters relating to entrepreneurial activity. To this extent, therefore, there is some reliance on the previous decisions of courts as a source of law.

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<sup>21</sup> Federal Law No.366-FZ, dated 30 November 2011.

<sup>22</sup> Resolution of the Federal Arbitrazh District Court No.A32-30626/2010, dated 11 January 2012.