The Russian Civil Code and its Impact Upon Commercial Transactions

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1. The new Civil Code of the Russian Federation has been in force for some time now. The first part of the Code (453 articles) is divided into three sections (I—General Provisions; II—Property and Other Rights in Rem; III—General Part of the Law of Obligations). This part was adopted on 1 January 1995. The second part of the Code contains its fourth section (656 articles) and has been in force since 1 March 1996. The third part of the Code (Section V—Inheritance and Section VI—Private International Law) contains 114 articles and was promulgated on 26 November 2001; work on the fourth part of the Code (Intellectual Property) is still in progress.

Not of all of the constructs of the Code are applied with the same consistency and degree of intensity; a system of civil laws—as has been envisaged by the Code—has not yet been established. Nonetheless, it is possible to say that Russia’s Civil Code has lived up to expectations and has become the basic foundation for the legal regulation of the new Russian economic system. In his annual address to the Duma and the Federation Council on 17 February 1998, the RF President stated that “the normative basis for the activity of institutions of a civil society” had already been created in the Russian Federation. In this regard, among those laws that comprise this basis, the Civil Code was named second only to the Constitution in its importance.

The new Civil Code is not a “law of reform”: the privatization of state property, land reform, the renunciation of planned production and trade, and the transition to a system of free prices are governed by other acts. Russia’s Civil Code has a different purpose: it offers a system of stable rules for trade and commerce in the conditions of a market economy.

The Essential Characteristics of the New Russian Civil Code

2. The significance of the Civil Code for commercial transactions is primarily to be seen in the way it has created an institutional environment for the nurturing of business.
2.1. Chapter 4 of the Civil Code clearly defines the forms that entrepreneurship can take. The Soviet economy did not require a variety of legal forms of businesses for entrepreneurial activity; its “assortment” included only state enterprises (which, in reality, were institutions \[uchrezhdения\]) and quasi-cooperatives, namely, collective farms \(kolkhozy\). The shift to a market economy, based primarily on private property, necessitated the (re) birth of another type of legal person, that is, of corporations. The types of corporations listed in the Civil Code, (Ch.4, secs.1, 2, RF Civil Code and unless otherwise noted, all other references herein will be to the RF Civil Code)—joint-stock companies \(aktsionernye obshchestva\), companies with limited liability \(obshchestva s ogranichennoi otverstvennost’iu\), full partnerships \(polnye tovarishchestva\), and limited partnerships \(kommandita\) are well known in the legal systems of most countries of continental Europe. They were also known in pre-Revolutionary Russian legislation as well as in the Russian Soviet Federative Socialist Republic’s (RSFSR) first Civil Code of 1922. Production cooperatives, permitted under the new Code (Ch.4, sec.3), also belong to the category of commercial organizations of a corporate type.

The Civil Code grants certain specific rights and obligations to the participants and founders of various types of legal persons. The Code also sets forth the specific rules of a legal person’s internal organization, and, more importantly, its liability \(vis-à-vis\) third parties (creditors). Therefore, although the Code allows entrepreneurs to choose from among different types of legal persons, it also prohibits the establishment of entrepreneurial organizations in any other form. Prior to the entry into force of new Code, it was possible to create all sorts of “legal sphinxes and centaurs” in the commercial sector—\(i.e.,\) business forms unknown to the legislator—and this had been fertile soil for the growth of all sorts of fraud and speculation.

As of the late 1990s, there were approximately two million business organizations in Russia in the types set forth in the Civil Code. In addition to these, another 3.5 million citizens were engaged in entrepreneurial activities who have chosen not to form legal persons and who, rather, run their businesses as “individual entrepreneurs” (Arts.23-25). The Code stipulates that individual entrepreneurs must, nevertheless, register and extends to them many of the rules regulating the activities of legal persons.

2.2. On the basis of the 1993 RF Constitution, the Russian Civil Code establishes a system of property rights (functioning as the prerequisites for, and result of, commercial transactions), characteristic for a society with a developed market economy.