

Restrictions on Chains and Suppliers: New Operating Rules

23 March 2010

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On Feb. 1, 2010, Federal Law 381-FZ on the basis of state regulation of trade activities in the Russian Federation (the “Trade Law”) entered into force. The Trade Law has provoked widespread discussion, particularly because of earlier drafts containing a number of provisions expressly prohibiting common retailer activities, establishing maximum regional or local market shares and directly regulating relations between retailers and their suppliers.

Generally, the Trade Law introduces a number of new restrictions on the conduct of trade activities by businesses and also regulates the relations between those businesses and the state and local authorities.

The most important issues are highlighted below.

- From July 1, 2010, a grocery trade chain can no longer acquire new trade outlets in a given district or town if its market share in that district or town exceeds 25 percent. This prohibition covers both the purchase and lease of retail space. Agreements concluded in contravention of this rule are void. Notably, “introduction into operation of trade facilities” is treated as a means of acquiring trade facilities. Although the provisions of the Trade Law do not apply, in particular, to the purchase of real estate, it is possible that introducing into operation newly built trade facilities on land acquired by a retailer may be more difficult in cases where the retailer has greater than a 25 percent market share. Nevertheless, it is not clear how this regulation will apply in practice in this particular context.
- Food suppliers and their immediate customers — retailers — cannot impose certain enumerated conditions on one another. In particular, the prohibited conditions include those requiring suppliers to reduce the price of goods to a level which, subject to the retail margin (markup), does not exceed the minimum sale price of the same goods by similar businesses; requiring payment for changes in the selection of goods; imposing liability for failure to perform obligations to supply goods on conditions better than for other businesses; and making suppliers pay for access to trade facilities in a retail chain.
- Food product suppliers may still compensate retailers whose food product orders exceed a specified volume, but such a volume bonus cannot exceed 10 percent of the price of such orders. However, no such compensation can be paid for orders of certain staple food products as listed by the government, and all other types of compensation or bonuses for fulfilling (or amending) the terms of food product supply contracts are prohibited.
- The government may now set maximum retail prices in any regions on certain staple food products for a period of not more than 90 calendar days if the price of such goods rises by 30 percent or more during the course of 30 consecutive calendar days in these regions.
- Maximum payment terms have been set for certain food products. For food products with a shelf life of up to 10 days, payment must be made within 10 business days of accepting the goods; for food products with a shelf life of 10 to 30 days, payment must be made within 30 calendar days; and for all other food products, including alcohol, payment must be made within 45 calendar days.
- Food product supply agreements concluded before the Trade Law entered into force must be brought into compliance with the new requirements within 180 days of the Trade Law entering into force, that is, by July 31, 2010.

Thus, larger retail chains will need to be guided by the Trade Law in their development and will need to consider whether the new restrictions apply when deciding on the acquisition of retail space or construction sites, concluding and carrying out contracts with their wholesalers and setting prices for their goods.

