

Modernising Russian civil legislation

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- ▶ **Freedom** (strengthening the discretionary nature of law, granting greater discretion to entrepreneurs in using legal instruments).
- ▶ **Liability** (imposing stricter liability for violations and abuse).
- ▶ **Common sense** (optimising civil legislation based on the best international practices, taking a less formalistic approach).

- ▶ Giving the parties broader discretion when they develop the terms and conditions of business contracts;
- ▶ Introducing flexible formats for contracts (optional, framework, subscription and others)
- ▶ Protecting non-defined contracts;
- ▶ Governing conditional transactions in a flexible manner, etc.

- ▶ Entrenching the principle of good faith when contracts are entered into and performed;
- ▶ Liability for abusing the power of negotiation and bad faith negotiating practices in concluding a contract;
- ▶ Offering protection against unfair contractual terms and transactions being challenged in bad faith ;
- ▶ A court is obliged to award damages for violating a contract when the exact amount of such damages may not be assessed
- ▶ Astreinte, or a penalty in favour of a claimant when a ban contained in a court decision is breached.

- ▶ Introducing the concept of warranties and representations
- ▶ Reimbursing losses not relating to a contract breached
- ▶ Restricting the possibility for seeking that a contract be held not to have been concluded (because particular terms are uncertain)
- ▶ Taking a less formalistic approach to registering contracts, among other things

- ▶ Articles of association of non-public business entities: it is possible to depart significantly from provisions of the law
- ▶ Flexible shareholders' agreements: everything is permitted except that, which is expressly forbidden; options in managing non-public entities

- ▶ Increasing the liability of management for corporate violations
- ▶ Introducing a rule of liability of "shadow directors" for losses
- ▶ Liability of a parent company for asset stripping its subsidiary

- ▶ Restricting opportunity to challenge transactions made in violation of the rules for corporate approval if such transactions do not result in losses for the company (limiting the grounds for corporate blackmail)
- ▶ Introducing reasonable and flexible rules for reorganising legal entities
- ▶ Introducing reasonable rules for protecting creditors when companies are reorganised
- ▶ The possibility for having two and more directors in a company

Before: ex post facto protection,
i.e. a procedure for settling disputes

Now: ex ante protection,
i.e. the aim of preventing disputes

- ▶ A classical system of proprietary rights to real estate:

Ownership + 9 restricted proprietary rights:

- 1) right of development (superficies)
- 2) right of use (emphyteusis)
- 3) usufruct and others

- ▶ Departing from the principle of freedom of contract in favour of standardising relationships to protect a weaker party to a transaction

- ▶ To provide non-owners of real estate with a reliable, enforceable and freely transferable legal instrument
- ▶ Improving interdiction (prompt protection against asset forfeiture)

- ▶ 90% of provisions that were previously governed by English law may now be governed by Russian legislation
- ▶ Russian contract and corporate legislation has become a convenient tool for business
- ▶ The opportunity to defend business effectively in court has increased significantly

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foreign trade regulation; administrative and criminal defence of business.

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