

BOOK REVIEW NOTES

RUSSIAN BUSINESS LAW¹

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It's been 25 years since Russia has become one of the stakeholders of the world economy and a key member of international business community. Yet when it comes to the modern Russian Business Law, not much has been said, and even less has been written.

Professors Evgeny Gubin and Alexander Molotnikov, together with other authors, performed an impressive research project with the goals of uncovering, systemizing and outlining the essentials of the Russian Business Law. Their work took a lot of professional courage and enthusiasm which finally led to a long-awaited result: a fundamental and at the same time easy-to-read textbook that represents Russian commercial, business and legal basics to the global English-speaking audience.

The book consists of 10 chapters and covers the following topics: business legislation (Chapter 1); business association forms (Chapter 2); core business contracts (Chapter 3); bankruptcy (Chapter 4); securities regulation (Chapter 5); banking regulation (Chapter 6); regulation of natural resources (Chapter 7); competition (Chapter 8); investment regulation (Chapter 9); litigation, arbitration and other means of legal protection (Chapter 10).

The aforementioned areas go far beyond 'the essentials' of the Russian business law – a glimpse at the table of contents reveals modesty with which the authors have chosen a name to their book. For example, banking regulation, regulation of natural resources, contracts, litigation and arbitration are usually considered as independent and very

¹ Reviewed book: *Russian Business Law: the essentials* (E.P. Gubin, A.E. Molotnikov eds, Moscow, STARTUP 2016).

complex fields of study and are barely covered within a traditional course of Business Law taught in Russian law schools. In spite of all the challenges, the editors succeeded in forming a strong team of authors who managed to put together all principal questions related to Russian Business Law and even covered some specific areas.

The introductory note is an important part of the book where historical, social and conceptual background of Russian business and Russian business law is precisely explained. This text gives a short but meaningful comment on entrepreneurship revival, economic environment, Business Law evolution, entrepreneurship as a legal concept and Business Law principles in modern Russia.

Each chapter provides the reader with a consistent analysis of a corresponding theme, highlighting not only theoretical basics, but also a wide range of illustrative cases which can be hardly overestimated when, for example, liability issues are considered. Acting judicial practice is most broadly presented with respect to business transactions and other legal matters related to natural resources; each section of Chapter 7 includes a relevant overview of judicial practice.

One of the main challenges for businessmen and entrepreneurs planning to start their own business in Russia is picking an appropriate business association form, which can be a harder problem than one might imagine. Chapter 2 of the reviewed book gives a quick tour through all possible forms – starting from defining entrepreneurial activities and moving forward to an individual entrepreneurship and legal entities. The latter are classified into profit (corporate and state/municipal) and non-profit (corporate/unitary) organizations and observed in general terms of their establishment, reorganization and liquidation.

The managing bodies of legal entities are specified in a separate section together with authorized officers, branches and representations. This covers corporate basics and gives a simple key to structuring and managing business in accordance with Russian legislation (including responsibility questions).

Technical yet important steps related to preparation, submission and receipt of all documents necessary to the registering body are outlined in Section 3 of the Second Chapter.

Contracts that are traditionally considered by the Russian Civil Law as a basis of creating (primarily business) obligations are defined, grouped and categorized in the book by different criteria such as the aim and commonness of use. Contracts for state and municipal needs are specified separately from other types. A special section (Section 5 of the Third Chapter) is reserved for one of the most essential questions to any party of business transactions – liability for the non-performance of contractual obligations.

The Post-Soviet evolution of economic relations resulted in a vast market development, and many efficient financial instruments were integrated into the Russian legal system. In particular, securities and financial derivatives came into widespread acceptance, and today the Russian securities market turned into one of the largest and most recognized platforms for international business transactions. Chapter 5 of the reviewed book is dedicated to securities regulation and contains

detailed comments on regulations of the activities of securities market-makers (issuers, investors, professional securities market-makers, the organizer of trading and clearing organizations – just to name a few). The securities regulation block also includes provisions on the disclosure of information pertaining to the securities market in Section 5 of the Fifth Chapter and a special liability section.

One of the most substantial areas of the Russian Business Law – the Competition Law – is summarized in Chapter 8 of the book. This part sums up major areas of focus of the Russian Competition Law (prohibition of monopolistic behavior and unfair competition, prohibition of anticompetitive actions of state authorities and agencies, control over economic concentration, and the Federal Antimonopoly Service jurisdiction). In addition to the aforementioned chapter, there is an extra section – “Important Considerations for Foreign Investors” with special reference to merger control filings and rules on potentially anticompetitive agreements.

Another important subject fully covered by the book is bankruptcy. Bankruptcy is a condition which, even when there is a distant probability of this event occurring under the complex and strict norms of the Russian legislation, prevents many potential entrepreneurs from starting a business in the current economic situation.

“The Russian Business Law: the Essentials” clarifies definitions, sets criteria and focuses on the main features of bankruptcy, illustrates the basic characteristics of a debtor’s, s creditor’s and an arbitration receiver’s legal status, and in particular details and describes each stage of bankruptcy procedures (such as filing of bankruptcy, preventive procedures, receivership, financial rehabilitation, external administration, winding up and voluntary settlement).

Moreover, the book provides insight into the latest legislative amendments regarding the peculiarities of bankruptcy of specific types of debtors – not only certain types of legal entities (e.g. credit organizations, natural monopoly entities, strategic enterprises, insurance companies), but also natural persons and individual entrepreneurs whose legal status as one of the parties in bankruptcy proceedings has only recently gained sufficient legislative formalization.²

Businessmen and entrepreneurs who – owing to the reviewed book – become aware of bankruptcy rules and precautionary norms relevant thereto, should without further doubts consider wide investment opportunities existing today in Russia. One of the most interesting parts of the book for perspective investors is Chapter 9 which describes investment regulation and consists of eight practice-oriented sections covering legislative framework, foreign investment guarantees and restrictions (including selected restrictions other than those set forth by the Strategic Investment Law)³, special contract

² Федеральный закон «О несостоятельности (банкротстве)» [Federal Law No. 127-FZ “On the Insolvency (Bankruptcy)”], dated Oct. 26, 2002 (with amendments and supplements introduced by the law dated June 29, 2015).

³ Федеральный закон № 57-ФЗ «О порядке осуществления иностранных инвестиций в хозяйственные общества, имеющие стратегическое значение для обеспечения обороны страны и безопасности государства» [Federal Law No. 57-FZ “On the procedure for Foreign Investments into the Business Entities of Strategic Significance for Ensuring National Defense and State Security” dated Apr. 29, 2008].

treatment, investment funds, preferential treatment, a list of strategic industries and a special note on subsoil areas of federal significance.

Russia is famous for remarkable natural resources and these resources make our country very attractive to businessmen who are interested in the natural resources industry. Thus it is absolutely logical and reasonable from all practical perspectives to pay serious attention (as the authors did in Chapter 7 of the reviewed book) to legal matters such as:

- regulation of subsoil use (including but not limited to the right of ownership of the subsoil, classification of subsoil, licensing, transition and termination of subsoil use rights, production sharing agreement, rational use and protection of the subsoil, etc.);
- regulation of the gas industry (including description of the Unified Gas Supply System, gas markets (tariffs and prices), gas transportation, gas supplies, connection to the gas distributing networks, etc.);
- regulation of oil sector (revealing principles of access to oil pipelines and trunk pipelines, defining main activities of oil refineries, clearing up the rules of sale of oil products);
- regulation of the electric power industry (with focus on the Unified Energy System of Russia, the Unified National Electricity Grid, the Unified Monitoring Control, the wholesale energy market, retail markets of electric energy, access to the electric networks and services on electric energy transfer).

Last but not least, it is important to mention that the authors draw the reader's attention not only to the timeless traditional basics of the Russian business law, but also to a number of specific issues that appear to be on the front burner, such as the current situation in the Russian Banking Sector and the impact of sanctions thereon. Chapter 6 of the book covers these matters along with a general description of the Russian banking sector and analyses of the legal and regulatory framework.

The book gives detailed explanation to both substantive law and procedural law matters without mixing them up. The final part of the book (Chapter 10) is solely dedicated to litigation, arbitration and other means of the legal protection. The forms and methods of such protection are classified and divided into two main types – judicial (arbitration courts, courts of general jurisdiction, the Constitutional Court of the Russian Federation) and non-judicial (complaint/demanding procedure, arbitral tribunal proceeding, international commercial arbitration, notarial procedure).

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