

Legal Framework for Government Control over Trade in Russia

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Goltsblat BLP advises that **Federal Law No. 381-FZ of 28 December 2009 "On the Fundamental Principles of State Regulation of Trade in the Russian Federation"** (the Federal Law) comes into force on 1 February 2010.

The Federal Law mainly governs business relations pertaining to supplies of foodstuffs. For instance, it demands that food supply contracts concluded before the law's effective date be brought into line with the Federal Law by 30 July 2010.

Certain provisions also cover business relations in the supply of non-foodstuffs.

The Federal Law provides definitions of trading, wholesale, retail, a trading facility, trading network and food goods. It also introduces a commercial register of data on traders and the trading environment within a constituent entity of the Russian Federation.

Trading networks and food suppliers are now obligated to assure that the principles applied in selecting a counterparty for concluding relevant supply contracts, the material terms and essential conditions of these contracts be made publicly accessible.

Under the Federal Law, food supply contracts concluded may envisage only one type of remuneration payable to the buyer by the supplier - depending on the volume of goods purchased. The remuneration may not exceed 10 per cent of the total price paid for the purchased foodstuffs; it may be included in the contract price but must be disregarded in determining the ultimate price of the foodstuffs. Other remunerations, including for compliance with contractual terms or modifications, are now prohibited.

The Federal Law establishes an outside payment deadline in the event of delayed payment under food supply contracts (including for trading networks): for goods with a shelf life of less than 10 days, payment must be effected within 10 business days of the goods acceptance date; with a shelf life of 10 to 30 days (inclusive) – within 30 calendar days of the acceptance date; with a shelf-life of over 30 days (and for alcoholic products originating in the Russian Federation) – within 45 calendar days of acceptance.

With regard to certain types of essential foodstuff of social significance as per the list compiled by the Russian Government, the Government is entitled to establish maximum retail prices within a constituent entity of the Russian Federation provided that the prices for the foodstuffs in this region have risen by 30 (or more) per cent over 30 consecutive calendar days. The Government is also entitled to prohibit remunerations payable by the supplier to the buyer for such goods.

The Federal Law prohibits food supply contracts containing provisions on the buyer rendering advertising, marketing and similar services in connection with the goods. These services should be rendered under separate services agreements against a consideration.

For additional information, please contact:



Nikolay Voznesenskiy,
Head of Competition Practice,
Goltsblat BLP
T: +7 (495) 287 44 44,
E: info@gbplaw.com

www.gbplaw.com

Capital City Complex,
Moscow City Business Centre,
8, Presnenskaya Nab., Bldg. 1,
Moscow, 123100, Russia

T: +7 (495) 287 44 44
F: +7 (495) 287 44 45
E: info@gbplaw.com

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info@gbplaw.com

With a view to fostering competition, the Federal Law prohibits trading networks from selling foodstuffs and food goods suppliers from:

- imposing discriminatory conditions;
- imposing specific contractual terms on the counterparty: prohibiting contracts and agreements with other business entities; introducing liability for failure to perform supply conditions that are preferential compared to those effective for other entities; requiring disclosure about any contracts concluded with other business entities; requiring payments to be made for the right to supply the trading network; requiring payments in the event of product range changes; establishing a preferable price for goods supply; requiring the supplier to cover losses caused by damage to goods once ownership thereof is transferred; requiring reimbursement of costs not related to supply contract performance or sale of consignments; providing for return of unsold goods; and other similar terms and conditions;
- engaging in wholesale pursuant to a commission agreement or a mixed contract containing elements of a commission agreement.

The Federal Law prohibits acquisition and lease of additional (including new) premises to accommodate trading facilities by networks trading in food goods with a market share exceeding 25 per cent of the total volume (in monetary terms) of food goods sold in the previous financial year within a specific constituent entity of the Russian Federation, municipality or urban area. This restriction shall apply to municipalities and urban areas after 1 July 2010.

In addition to the already effective anti-monopoly provisions, the Federal Law streamlines and extends prohibitions imposed on government authorities of constituent entities of the Russian Federation and local governments with regard to trade regulation by introducing illegal orders, requirements, restrictions and bans.

The Federal Law also envisages the right to adopt regional and municipal trade development programmes, introduces a minimum level of provision with sales premises and other tools for promoting trade.