



**SUBSTANTIAL LEGISLATIVE AMENDMENTS ARE BEING PREPARED WITH A VIEW TO PLACING RESTRICTIONS ON THE ISSUING OF LICENCES TO PRODUCE AND CIRCULATE ALCOHOL, AND TO MAKE LIABILITY HARSHER IF THE PRODUCTION AND CIRCULATION OF ALCOHOL IS NOT DULY DECLARED**

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*For the attention of the CEOs, heads of legal and chief accountants of companies active on the alcohol market*

**Pepeliaev Group advises that the State Duma has accepted for consideration a draft law under which, if licences to produce and circulate ethyl alcohol, alcohol and products containing alcohol are revoked, or are terminated early after being suspended, a replacement may be obtained only after a year has elapsed. Provision is made for other equally substantial amendments. These cover situations when the production and circulation of alcohol is not properly declared, and when a licence is reissued further to a reorganisation.**

A group of deputies has put before the State Duma Draft Law No. 665811-6 “On amending article 19 and 20 of the Federal Law ‘On the state regulation of the production and circulation of ethyl alcohol, alcohol products and products containing alcohol, and on limiting the consumption (drinking of) alcohol products’ and article 15.13 of the Russian Code of Administrative Offences”.

The draft law provides for the following amendments.

1. There are additions to the grounds for refusing to issue a licence to produce and circulate ethyl alcohol, alcohol products and products containing alcohol:
  - the applicant has had a licence cancelled within a one-year period before its licence application was received;
  - a licence was terminated early further to the licensee’s application within a one-year period before the licence application was received, provided that such previous application to terminate was filed after the licensing authority took a decision to suspend the licence and/or a decision to apply to the court to have the applicant’s licence cancelled.

To justify the need to introduce such new grounds, the proponents of the draft law point to the fact that business entities that commit gross violations of licence requirements and lose their licence as a result, nonetheless obtain a new licence and continue their unlawful activity for at least two more years. What is more, the licensing authority has no right to check whether such business entities are complying with the statutory requirements.

2. If the licensing authority, on the date when it receives an application to extend the term of a licence or an application to have a licence reissued, has already taken a decision to suspend the effect of the licence or to refer an application to the court for the licence to be cancelled, then the licensing authority:
  - (i) may not examine the application; and (ii) must return it to the licensee on the date on which it is received.

This change should exclude the possibility that state duty will unjustifiably be charged to applicants who apply for a licence to be extended or to have it reissued, when the process of cancelling the licence is

under way and it is known that the applicant will be refused the state service for which the duty is exacted.

4. It is proposed that the licensing authority be granted a right to terminate a licence of both an entity that is being wound up and also one that is being reorganised. The authority should do this not earlier than 30 days after a record is entered in the Unified State Register of Legal Entities that the entity has been liquidated or has ceased its operations further to the reorganisation. In the latter case, the termination is possible only if the licensee has not used its right to have the licence reissued in the name of the new legal entity within the 30-day statutory timeframe.

The proponents of the amendments indicate that, currently, a business entity that is excluded from the companies register may have its licence terminated only by way of such licence being cancelled with recourse to the court. This is in spite of such termination being purely formal in nature.

It is proposed that, in certain circumstances, a licence may be cancelled further to a decision of the regulator Rosalkogolregulirovaniye (with no application to the court). This will be possible if: (i) false information is communicated for a second time in a single year in declarations of the volume of ethyl alcohol, alcohol products or products containing alcohol that is produced, circulated or used, or the use of production facilities; or (ii) if such declarations are filed late for a second time within one year.

Under the proposal, such violations may be considered a ground for the licence to be cancelled only if they have been committed within one year before the date on which they are identified.

5. There is a substantially increased administrative fine for (i) misrepresenting information; and/or (ii) infringing the procedure and deadlines during the declaration process for:
  - the production, circulation and/or use of ethyl alcohol, alcohol products and products containing alcohol; and/or
  - the use of production capabilities.

The fine for an officer of a company ranges from RUB 40,000 to RUB 50,000, while that for legal entities is between RUB 400,000 and RUB 500,000.

One of the supposed benefits of the amendments being adopted is that there will be a fall in the number of such infringements as business entities failing to timely file declarations of the volume of alcohol products. The proponents of the draft law believe that this will allow the mechanism for identifying illegal alcohol products on the market to be implemented more fully.

The deadline set for companies to send their opinions, suggestions and comments the draft law to the State Duma committee responsible for the law is 19 February 2014.

### What to think about, what to do

As stated in its Explanatory Note, the draft law aims to make licensees responsible to a greater degree for complying with the statutory requirements for the production and circulation of alcohol products and products containing alcohol. Therefore, it is sensible for companies in the near future to arrange an audit to identify where they may be infringing any requirements, giving grounds for a licence to be suspended and cancelled.

If an audit results in licence risks being identified, it is worth promptly making use of the currently existing mechanism of terminating a licence early and at the same time obtaining a new licence.

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<sup>1</sup> Currently, article 15.13 of the Russian Code of Administrative Offences provides for this violation to entail an administrative fine of between RUB 5,000 and RUB 10,000 for an officer of a company, while the fine for legal entities ranges from RUB 50,000 to RUB 100,000.

<sup>2</sup> The State Duma's Economic Policy, Innovative Development and Enterprise Committee

### Help from your adviser

Pepeliaev Group's lawyers are ready to assist you in conducting an audit of licensing risks, to provide support in the process of terminating a licence early and at the same time obtaining a new licence. They can also help you to prepare comments on the draft law, to come up with proposals to improve it and lobby on behalf of your company at the stage when parliament is examining the draft.

### Contact details



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