

LANDING LAW: NEW RULES OF THE GAME?

Federal Law No. 236-FZ dated 1 July 2021 "On Activities of Foreign Persons on the Information and Telecom Network "Internet" in the Territory of the Russian Federation" ("**Landing Law**") came into force on 1 July 2021¹. Seeking to establish 'equal conditions' for local and offshore companies in Russia, the Landing Law requires the latter ones to comply with numerous requirements under the supervision of Russian authorities and for these purposes to ensure physical presence in Russia starting from 1 January 2022.

BACKGROUND

According to the explanatory note to the bill as first proposed², the Landing Law was intended to formally regulate operation of foreign IT companies (such as Google, Facebook, Twitter, etc.) which de facto provide online services to Russian users but de jure may disregard requirements and restrictions applicable to Russian companies and ignore requests of Russian authorities.

In other words, the main goal of the Landing Law adopted under the pretext of protecting Russian users is to enable Russian authorities to apply their online and offline enforcement measures which can currently be applied against Russian businesses also to foreign companies tapping the Russian market from abroad.

THE SCOPE OF THE LANDING LAW

The Landing Law purports to regulate foreign companies ("**Internet Companies**")³ which:

- own a website and/or webpage and/or information system and/or software accessed by more than 500,000 Russian users per day if there ("**Category 1**"):
 - information is published and/or distributed in Russian, in the state language of one of the republics within Russia or in other languages of peoples of Russia; and/or
 - advertising targeted at consumers from Russia is distributed; and/or
 - data of users from Russia is processed; and/or
 - Russian individuals and legal entities make payments to such Internet Companies;

¹ Although some of the provisions of the Landing Law will come into effect in 2022.

² <https://sozd.duma.gov.ru/bill/909987-7>.

³ Article 4 of the Landing Law.

or

- qualify as ("**Category 2**"):
 - providers of hosting or other persons making internet resources available to users including persons from Russia ("**Hosting Providers**");
 - administrators of information systems and/or software designed to disseminate advertising by means of third parties' information resources, which is targeted at consumers including persons from Russia ("**Operators of Advertising Systems**");
 - administrators of information systems and/or software intended to, and/or used for, acceptance, transfer, delivery and/or processing of electronic messages of users including persons from Russia ("**Information Distributors**").

Internet Companies are put on the list of Internet Companies (the "List") maintained by the Federal Service for Supervision in the Sphere of Telecom, Information Technologies and Mass Communications ("**Roskomnadzor**").

MAIN REQUIREMENTS TO INTERNET COMPANIES

The Landing Law requires Internet Companies:

- to place an electronic contact form on their information resources for submission of inquiries by Russian citizens and legal entities in accordance with Roskomnadzor's requirements;
- to create an account on Roskomnadzor's official website and use it for interaction with Russian authorities (to send/receive documents to/from them);
- starting from 1 January 2022 to establish a branch, representative office or new entity in Russia which will be obliged to:
 - accept and consider enquiries addressed by Russian citizens and entities to the represented Internet Company and fulfil any court decision and decision or request of Russian authorities in respect of the Internet Company;
 - represent the Internet Company in court; and
 - take measures to limit access to or delete certain information that violates Russian legislation;
- install one of the applications suggested by Roskomnadzor to count users of their information resource.

LIABILITY FOR NON-COMPLIANCE

The Landing Law provides for a number of measures that could be applied by Roskomnadzor against an Internet Company in case of its failure to comply with (i) requirements of the Landing Law as described in section 3 above or (ii) requirements of certain other Russian laws which (a) are specified in the Landing Law itself (e.g. requirement to restrict access to, or delete, information dissemination of which is prohibited in Russia, personal data localisation requirement, etc.) or (b) may be amended in the future to refer to the measures stipulated by the Landing Law (while the Landing Law mentions that measures thereunder are applicable in "*other cases envisaged by federal laws*", there are no such laws at the moment). These measures include:

- informing the users of the Internet Company's information resource that³ it violates Russian law (i.e. search engine operators would have to include such text in the search results);
- prohibition on disseminating advertising (i.e. promotion) of the Internet Company itself and/or its information resource;
- prohibition on using the Internet Company's information resource for disseminating advertising by third parties (i.e. Russian advertisers would not be allowed to promote themselves on the Internet Company's platform);
- restriction of money transfers and acceptance of payments from individuals and legal entities to the Internet Company (i.e. Russian banks would be prohibited from transferring money to the affected Internet Company and foreign payment services providers would be prohibited from accepting payments to the affected Internet Companies);
- prohibition on inclusion of the Internet Company's information resource in search results (i.e. search engine operators will be prohibited from showing links to the Internet Company's website or webpage to users);
- prohibition on collection and cross-border transfer of personal data of Russian citizens;
- partial blocking of access to the Internet Company's information resource; and
- complete blocking of access to the Internet Company's information resource.

In addition, the Landing Law declares that violation thereof may trigger liability *"in accordance with the laws of the Russian Federation"*.

CERTAIN PRACTICAL CONSIDERATIONS

Although real effect of the Landing Law is to be assessed following its practical application and interpretation, even now it raises certain concerns which, among other things, relate to:

Implementation by imposing restrictions on third parties

Whereas Internet Companies are the main targets of the Landing Law, its implementation will in fact affect other entities (including search engine operators, credit institutions, telecom operators, etc.) forced to participate in enforcement of the measures mentioned in section 4 above. This point is relevant not only to Russian companies, but also to foreign entities which at first sight may have nothing to do with the Landing Law.

For example, restriction on money transfers will have to be observed by so-called 'foreign payment services providers' (i.e. non-Russian banks and e-wallets). Otherwise, money transfers to such foreign payment services providers from Russia may be blocked too. This provision of the Landing Law does not specify that a ban on payment to foreign payment services providers will apply only to payments made to foreign payment services providers for the benefit of non-compliant Internet Companies. In other words, literally it can be read as prohibiting execution of any payments in favour of 'banned' foreign banks and e-wallets, or their clients.

Tax implications

If an Internet Company complies with the obligation to open a branch or a representative office in Russia or set-up a subsidiary, it will be necessary to carefully consider mandate of such representative office/branch/subsidiary not to trigger creating a taxable permanent establishment in Russia and subject the revenues received from Russian clients subject to corporate income taxation in Russia.

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