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Institute of Philosophy and Law

**RUSSIAN  
BUSINESS LAW**

edited by

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## Chapter 1

# INTRODUCTION TO RUSSIAN BUSINESS LAW

### 1.1. Scope of Russian Business Law

#### 1.1.1. Definition of Business Activity

At present business, or entrepreneurial activity is legally defined in Article 2 (1) of the Civil Code of the Russian Federation:

It is an independent activity, carried out at one's own risk and aimed at systematic receipt of profit from the use of property, sale of goods, performance of works or rendering services.

Thus, the current legislation provides for the following three qualifying features of business activity:

- (1) independence, which in the theory of Business Law is usually revealed through two components<sup>1</sup>:
  - property independence assuming the existence of property for subjects of business activity and free use of it;
  - economic (organizational) independence implying a possibility for the subjects of business activity to make independent economic decisions while conducting their business;
- (2) the presence of risk, which usually means the possibility of not getting the expected profit and arising losses as the result of business activity, either due to the

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<sup>1</sup> Ershova I.V., Otnuykova G.D. (ed.), *Rossiyskoye predprinimatelskoye pravo* [Russian Business Law] (Moscow: Velbi & Prospekt Publ., 2006), p. 17, 18.

contractors' violation of their obligations or due to such changes in the conditions of performing the activity, which are beyond the control of the entrepreneur;

(3) the focus on systematic earning of profit from using property, selling goods, performing works or rendering services. It seems to be recognized as the main qualifying characteristic of entrepreneurship, whereas the others can be typical of other types of economic activity. Here there are three elements to be taken into account:

- aiming at the process of earning of profit. It also means that there may be no profit at all, as the business activity comprises a certain element of risk. In addition, it should be noted that it is not usually recognized as just revenues raised from making and performance of transactions, but the difference between revenues and costs to be covered after the activity has been conducted;
- systematic conduction of such an activity, which means that it is to be performed regularly and usually presumes making more than one transaction. Meanwhile, as it is stated in literature, the possibility of recognizing even one single transaction as a business one cannot be excluded<sup>2</sup>;
- the economic character of activity, which seems to be interpreted in a broad sense and to include using property, selling goods, performing works or rendering services.

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<sup>2</sup> Belykh V.S., *Pravovoye regulirovaniye predprinimatelskoi deyatel'nosti v Rossii* [Legal Regulation of Business Activity in Russia] (Moscow: Velbi & Prospekt Publ., 2005), p. 41, 42.

In spite of these criteria it is sometimes difficult to apply them in settling cases in courts.

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## **JUDICIAL PRACTICE**

According to the Resolution of the Plenum of the Supreme Court of the Russian Federation of October 24, 2006 № 18 “On Some Issues Arising from the Courts in the Application of the Special Part of the Code of Administrative Offences of the Russian Federation” (Paragraph 13), it was stated that the lack of profit does not affect the qualification of offenses under Article 14.1 of the Code of Administrative Offences of the Russian Federation, since profit is the purpose of business activity, and not its mandatory result. As it was ruled, a lot of circumstances need to be taken into account. In particular, conducting business activity can be evidenced by such facts as: the number of goods transferred for a fee, their range, the volume of work performed, services rendered; placement of advertisements; the exhibition of samples of goods at the point of sale; the purchase of goods and materials; the conclusion of lease agreements.

Considering the case on verification of constitutionality of certain provisions of Articles 74 and 77 of Federal Law “On Joint Stock Companies”, the Constitutional Court of the Russian Federation held that the activity of shareholders is not to be recognized as business. It refers to another economic activity not prohibited by the law, although it involves certain economic risks. Business activity is carried out not by shareholders, as such, but the joint-stock company itself<sup>3</sup>.

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Thus, business activity is deemed to be a type of economic activity, which includes production and sale of goods, performance of works and rendering services, and which is

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<sup>3</sup> Resolution of the Constitutional Court of the Russian Federation of February 24, 2004 № 3-P “On the Case of Checking the Constitutionality of Certain Provisions of Articles 74 and 77 of Federal Law “On Joint-Stock Companies”, Regulating the Consolidation of the Outstanding Shares of the Company and the Purchase of Fractional Shares, in Connection with the Complaints of Citizens, Legal Entity and the Request of the October District Court of the City of Penza”.

## **Chapter 1. Introduction to Russian Business Law**

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aimed at the systematic receipt of profit. Sometimes they can be directly declared as business in the legislation:

- trade activity (Article 2 (1) of Federal Law of December 28, 2009 № 381-FZ “On Bases of State Regulation of Trade Activity in the Russian Federation”);
- farming (Article 1 (3) of Federal Law of June 11, 2003 № 74-FZ “On Farm Holding”);
- industrial and coastal fishing (Article 1 (1) of Federal Law of December 20, 2004 № 166-FZ “On Fisheries and Conservation of Aquatic Biological Resources”), etc.

On the contrary, there are a lot of other activities that are not recognized as business by virtue of law:

- the sale of agricultural products by citizens who have their private subsidiary farms (Article 2 (4) of Federal Law of July 7, 2003 № 112-FZ “On Personal Subsidiary Farm”);
- activity of notaries (Article 1 (6) of Bases of the Legislation of the Russian Federation on Notary Offices of February 11, 1993 № 4462-I);
- activity of advocates (Article 1 (2) of Federal Law of May 31, 2002 № 63-FZ “On Advocates’ Activity and Advocacy in the Russian Federation”), etc.

### **1.1.2. Permission to Conduct Business Activity**

Legal capability to conduct business activity is equally permitted to both individuals and commercial organizations and is included into the content of their legal capacity. In particular, pursuant to Article 34 (1) of the Constitution of the Russian Federation:

Everyone shall have the right to free use of his abilities and property for business and economic activities not prohibited by the law.

Articles 18 and 49 of the Civil Code of the Russian Federation also stipulate that:

The citizens ... may engage in business and in any other activities, not prohibited by the law ...

Commercial organizations, with the exception of unitary enterprises and other types of organizations provided for by the law, may have civil rights and bear civil duties necessary for the implementation of any activities not prohibited by the law.

Meanwhile, in all these cases the registration of both individual businessmen and legal entities is required. In conformity with Article 23 (1) of the Civil Code of the Russian Federation:

The citizen shall have the right to engage in business activity without forming a legal entity from the moment of their state registration in the capacity of an individual businessman, except for the cases ...

With regard to certain types of business activity, the law may provide for the conditions for citizens to carry out such activities without state registration as an individual businessman.

The registration of legal entities is also an indispensable step in the process of their foundation. It grants them necessary legal capacity to participate in civil and other law relations.

In some cases provided by the law, a legal entity or an individual businessman may engage in certain types of business activity only on the basis of:

- a special permit (license) issued in accordance with Federal Law of May 4, 2011 № 99-FZ “On Licensing Certain Types of Activity” and other federal laws;
- membership in a self-regulating organization or a certificate issued by such an organization on admission to a certain type of work in accordance with Federal Law of December 1, 2007 № 315-FZ “On Self-Regulating Organizations” and other federal laws.



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In addition, it should be noted that the right to carry out business activity may be restricted on the basis of federal law to the extent necessary to protect the foundations of the constitutional system, morality, health, rights and legitimate interests of other persons, to ensure national defense and state security. It is directly stipulated in the legislation, for example, in Articles 34 (1) and 55 (3) of the Constitution of the Russian Federation, Articles 1 (2), 22 (1), 49 (2) of the Civil Code of the Russian Federation.

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### **JUDICIAL PRACTICE**

In accordance with the Resolution of the Constitutional Court of the Russian Federation of April 22, 2011 № 5-P “On the Case of Checking the Constitutionality of the Provisions of Article 15 (3) of Federal Law “On Road Safety” in Connection with the Complaint of Citizen G.V. Shikunova”, while carrying out regulation of the right of property and relations connected with it on possession, use and disposal of property (Article 71 (c), (n) of the Constitution of the Russian Federation), the federal legislator must act within the discretionary powers granted to it by the Constitution of the Russian Federation and to be guided by requirements of Article 55 (3), according to which the rights and freedoms of the person and the citizen can be limited by the federal law only to the extent which is necessary for the purpose of protection of bases of the constitutional system, morals, health, the rights and legitimate interests of others, the defense of the country and the security of the state. Because of the fundamental principles of the rule of law and legal equality, the state intervention in property relations should not be arbitrary and not frustrate the balance between the requirements of the interests of society and the necessary conditions for the protection of fundamental rights of individuals, which implies a reasonable proportionality between the means used and the objective pursued, so as to ensure the balance between constitutionally protected values and the person not subjected to excessive encumbrance. Finally it was held that the restriction of the right of ownership in virtue of Article 55 (3) of the Constitution of the Russian Federation in interrelation with Articles 8, 17 (3), 19 (1), (2), 34 and 35 may be imposed by federal law, if it is necessary to protect other important constitutional values, including rights and lawful interests of other persons, meet the requirements of justice,

reasonableness and proportionality, they are general and abstract, not retroactive and do not affect the substance of this constitutional right<sup>4</sup>.

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### **1.1.3. Types of Relations Governed by Business Law**

Traditionally there are three groups of relations related to conducting business activity and governed by Business Law. They are<sup>5</sup>:

- horizontal relations, which are based on legal equality of the parties who are participants of business activity. They may be contractual or tort relations which fall within the scope of Civil Law;
- vertical relations involving the state regulation of business activity. They arise between an individual businessman or a commercial organization, as one party, and a state or municipal governmental body, as the other. They usually do not imply legal equality of the parties and belong to administrative, financial, and other public law sphere;
- internal, or corporate, relations arising within legal entities concerning their establishment, functioning and termination. The participants of such relations are found within a legal entity, they may be its founders and

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<sup>4</sup> See also: Resolutions of the Constitutional Court of the Russian Federation of July 16, 2008 № 9-P, of January 31, 2011 № 1-P, etc.

<sup>5</sup> Laptev V.V., *Predprinimatelskoye (khozyaistvennoye) pravo. Izbrannyye trudy* [Business (Economic) Law. Selected Works] (Ekaterinburg: Business, Management & Law, 2008), p. 185; Gubin E.P., Lakhno P.G. (ed.), *Predprinimatelskoye pravo Rossiiskoi Federatsii* [Business Law of the Russian Federation] (Moscow: Norma & Infra-M, 2010), p. 42–44; Belykh V.S. (ed.), *Predprinimatelskoye pravo Rossii* [Business Law of Russia] (Moscow: Prospekt, 2016), p. 22, 23; etc.

shareholders, members of governance and management bodies and third parties.

Thus, relations arising from conducting business activity are diverse in their legal sense. Contractual and tort law relations are in the sphere of Civil Law and in accordance with the Constitution of the Russian Federation they are to be regulated by the Civil Code of the Russian Federation and other federal laws. Relations connected with the state regulation of business activity have primarily public law nature and can be governed not only by federal, but also regional and municipal laws. Corporate relations imply in their regulation not only the legal equality of the parties, but also subordination and can be governed by corporate legislation, including the Civil Code of the Russian Federation and a lot of special federal laws on particular types of legal entities, as well as local acts adopted within appropriate legal entities.

### **1.2. Subjects of Business Law**

There are three main subjects of Business Law. They are:

- individual businessmen;
- legal entities;
- the state, which includes public law entities (the Russian Federation, subjects of the Russian Federation, and municipalities) as well as their governmental bodies.

#### **1.2.1. Individual Businessmen**

Individual businessmen are physical persons registered as such in the Unified State Register of Individual Businessmen in accordance with Federal Law of August 8, 2001 № 129-FZ “On State Registration of Legal Entities and Individual

Businessmen”. The authorized governmental body for the state registration is Federal Tax Service.

In accordance with Article 23 (1) of the Civil Code of the Russian Federation a citizen has the right to engage in business activity without forming a legal entity from the moment of state registration as an individual businessman. However, with regard to certain types of business activity, the law may provide for the conditions for citizens to carry out such an activity without state registration as an individual businessman.

Individuals with full legal capacity have the right to acquire the status of an individual businessman. It applies to:

- adults (over 18 years) (Article 21 (1) of the Civil Code of the Russian Federation);
- minors who have married (Article 21 (2) of the Civil Code of the Russian Federation);
- minors (over the age of 16) declared fully legally capable (emancipation), if they work under an employment contract or they engage in business activity with a notarized consent of their parents, guardians, or curators) (Article 27 of the Civil Code of the Russian Federation). The declaration of a minor as fully capable in the legal field is made by the decision of the authorized governmental body on guardianship and curatorship with the consent of both parents, a guardian, or a curator, or in the absence of such a consent – by a court decision.

The state registration of a physical person as an individual businessman is not allowed if:

- their state registration in such capacity is still valid;
- a year has not elapsed from the date of the court’s decision to declare them insolvent (bankrupt) in connection with the inability to satisfy the creditors’

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claims related to the previously carried out business activity, or from the decision to terminate their activity as an individual businessman;

- the term, for which the person has been deprived of the right to engage in business activity by a court decision, has not expired.

If compared with physical persons, the state registration of individual businessmen changes their legal status in the following ways:

- The business activity of individual businessmen is subject to the rules of the Civil Code of the Russian Federation, which regulate the activity of commercial organizations, unless otherwise follows from the law, other legal acts or the substance of the legal relationship (Article 23 (3) of the Civil Code of the Russian Federation). A citizen who carries out business activity without forming a legal entity in violation of the requirements for state registration is not entitled to refer to transactions concluded by them that they are not individual businessmen. The court may apply to such transactions the rules of the Civil Code of the Russian Federation on obligations related to business activity (Article 23 (4) of the Civil Code of the Russian Federation).
- A citizen is liable for their obligations with all the property belonging to them, except for the property, which in accordance with the law cannot be levied. The list of property of citizens, which cannot be levied, is established by the civil procedural legislation (Article 24 of the Civil Code of the Russian Federation).
- Economic disputes with participation of individuals engaged in business activity without forming a legal entity and having the status of an individual businessman, acquired in accordance with the law, shall be settled by

arbitration courts of the Russian Federation (Article 27 (2) of Arbitral Procedural Code of the Russian Federation).

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## **JUDICIAL PRACTICE**

In accordance with Paragraph 13 of the Resolution of Plenum of the Supreme Court of the Russian Federation and Plenum of the Supreme Arbitration Court of the Russian Federation of July 1, 1996 № 6/8 “On Some Questions Connected with Application of Part One of the Civil Code of the Russian Federation” a citizen who is engaged in business activity without having obtained the state registration as an individual businessman, is not granted the legal status of an individual businessman in this activity and therefore disputes with the participation of such persons, including disputes connected with their business activity fall under the jurisdiction of federal courts of general jurisdiction.

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### **1.2.2. Legal Entities**

#### **1.2.2.1. Definition and Types of Legal Entities**

According to Article 48 of the Civil Code of the Russian Federation:

A legal entity is an organization that has separate property, is liable with this property for its obligations, may in its own name acquire and exercise civil law rights and bear civil law duties and be a plaintiff or a defendant in the court.

Thus, the main features of a legal entity are as follows:

- separate property;
- independent property liability;
- participation in civil circulation on its own behalf;
- organizational unity.

Legal entities shall be registered in the Unified State Register of Legal Entities in accordance with Federal Law of

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August 8, 2001 № 129-FZ “On State Registration of Legal Entities and Individual Businessmen”. The authorized governmental body for the state registration is usually Federal Tax Service. The legal capacity of a legal entity arises from the moment of entering into the Unified State Register of Legal Entities of information on its creation and stops at the time of entering into the specified Register of information on its termination.

The list of types of legal entities is stipulated by the Civil Code of the Russian Federation. They can be classified on various grounds. Depending on their main purpose, they are:

- commercial organizations, which pursue profit as the key aim of their activity;
- non-commercial organizations, which do not have profit as such a purpose and do not distribute their income among the participants. Such organizations may carry out income-generating activity, if provided for in their charters, only to the extent that serves the purposes for which they are established and if it is consistent with such purposes. At the same time, a non-commercial organization, whose charter provides for the implementation of income-generating activities, with the exception of state and private institutions, must have sufficient property for the implementation of these activities with a market value of not less than the minimum amount of authorized capital provided for limited liability companies (Article 50 (5) of the Civil Code of the Russian Federation).

Legal entities can also be:

- corporate legal entities, in respect of which their participants have corporate rights (right to participate

(membership), the right to form management bodies, etc.);

- unitary legal entities, the founders of which do not become their participants and do not acquire membership rights in them. They include state and municipal unitary enterprises, funds, institutions, autonomous non-commercial organizations, religious organizations, public law companies.

#### 1.2.2.2. Types of Commercial Organizations

According to Article 50 (2) of the Civil Code of the Russian Federation commercial organizations can be created in the forms of the following legal entities:

- **general partnership**, in which the participants (general partners) in accordance with the agreement concluded between them are engaged in business activity on behalf of the partnership and are responsible for its obligations with property belonging to them;
- **limited partnership**. In such a partnership there are not only full partners, but also one or more depositors, who bear the risk of losses associated with the activity of the partnership within the amount of their contributions, and who do not participate in the business activity of the partnership;
- **limited liability company**, in which the authorized capital is divided into shares; the company's members are not liable for its obligations and bear the risk of losses associated with the company's activities, within the value of their shares;



- **joint-stock company**, in which the authorized capital is divided into a certain number of shares as securities; members of the joint-stock company (shareholders) are not liable for its obligations and bear the risk of losses associated with the company's activities, within the value of their shares. A joint-stock company can be public, if its shares (securities) are publicly placed (by open subscription) or publicly traded under the conditions established by the securities laws;
- **farm holding**. It is a voluntary association of citizens on the basis of membership for joint production or other economic activity in the field of agriculture, based on their personal participation and association of their property contributions. The property of the farm holding is in its ownership;
- **economic partnership**. It is established by two or more persons and is managed by the participants as well as other persons within the limits and to the extent provided for in the partnership management agreement. The partnership's participants are not liable for the partnership's obligations and bear the risk of losses related to the partnership's activity within the amount of their contributions;
- **production cooperative**. It is a voluntary association of citizens on the basis of membership for joint production or other economic activity (production, processing, sale of industrial, agricultural and other products, performance of work, trade, consumer services, provision of other services), based on their personal labor and other participation and association of their property contributions. The law and the charter of the production

cooperative may provide for the participation of legal entities in it as well;

- **state and municipal unitary enterprises.** They are constituted by the state (public law entities) and are endowed with the right of economic or operational management to the state or municipal property. Such property remains in the state or municipal ownership, and its disposal is usually restricted by the state throughout the necessity to obtain its permission to make transactions with the property.

### 1.2.2.3. Types of Non-Commercial Organizations

Non-commercial organizations can be formed in the following legal entities:

- consumer cooperatives, which include, *inter alia*, housing, housing-construction and garage cooperatives, fruit-gardening, vegetable-gardening and vacation consumer cooperatives, mutual insurance societies, credit cooperatives, equipment rental pools, agricultural consumer cooperatives;
- public organizations, which include, *inter alia*, political parties and trade unions (trade union organizations) formed as legal entities, amateur activity bodies, and territorial societal self-governing organizations;
- public movements;
- associations (unions), which include, *inter alia*, non-commercial partnerships, self-regulating organizations, associations of employers, associations of trade unions, of cooperatives and of public organizations, industry and commerce, notaries chambers;

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- associations of owners of immovable property, which include, *inter alia*, associations of owners of dwelling;
- the Cossack associations included in the State Register of Cossack Associations in the Russian Federation;
- communities of the indigenous small-numbered peoples of the Russian Federation;
- funds, which include, *inter alia*, public and charitable funds;
- institutions, which include state institutions (for instance, state academies of sciences), municipal institutions and private (including *inter alia* social) institutions;
- autonomous non-commercial organizations;
- religious organizations;
- public law companies;
- advocates' chambers based on mandatory membership and created in the form of the advocates' chamber of the subject of the Russian Federation or the Federal chamber of advocates of the Russian Federation for the implementation of the objectives stipulated by the legislation on advocates' activity and advocacy;
- advocates' entities established in the forms of a bar association, a law office or legal advice;
- state corporations;
- notary chambers.

### 1.2.3. State

#### 1.2.3.1. Public Law Entities

In Civil Law sphere the state acts throughout mainly public law entities, which include the following three types of subjects having civil law capacity:

- the Russian Federation;