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Significant Fines Introduced for Violation of Personal Data Localization Rule

On December 2, 2019 the RF President signed a new law that establishes significant fines for violations of the localization rule in respect to the personal data of Russian citizens.

From September 2015, both foreign and Russian companies must process the personal data of Russian citizens using databases located in Russia (the so-called data localization rule)¹.

From 2016, the regulatory body has increased its activity of checking compliance with the data localization rule. Even foreign companies with no offices in Russia may be scrutinized by the regulatory body. Now, companies violating the data localization rule will face significant fines.

RISKS TO BE TAKEN INTO CONSIDERATION

Frequently, servers used for global databases and those hosting websites are located outside of Russia. Therefore, Russian and foreign companies using global solutions and/or collecting personal data via websites should pay special attention to the data localization rule.

The regulatory body has a right to examine companies even if they have no legal presence in Russia. While identifying possible targets, the regulatory body tends to use criteria, which allows it to consider the activities of a foreign company it believes are “aimed at the territory of the Russian Federation”.

Failure to meet the data localization rule can, in particular, lead to the following negative consequences for a company and its officials:

1. Administrative liability

Until recently there was no special liability for violations of the data localization rule. On December 2, 2019 the RF President signed a new law² establishing significant fines for violations of the personal data localization rule:

- administrative fines for legal entities range from **RUB 1,000,000 to 6,000,000**, and for company officials **from RUB 100,000 to 200,000**;
- for repeated offences the administrative fine for legal entities ranges from **RUB 6,000,000 to 18,000,000**, and for company officials **from RUB 500,000 to 800,000**.

It should be noted, that the wording of the new law is not specific enough and potentially gives authorities the ability to impose several fines upon the results of each inspection, followed by subsequent fines, without giving companies sufficient time to comply with the law; in particular, the

¹ According to Section 5 of Article 18 of Federal Law No. 152-FZ dd. July 27, 2006 “On Personal Data” (added by Federal Law No. 242-FZ dd. July 21, 2014), “when collecting personal data, in particular, via Internet, an operator shall ensure that the recording, systematization, accumulation, retention, adjustment (update, amendment) and extraction of Russian citizens’ personal data shall be performed via databases located in Russia”.

Due to unclear wording of the data localization rule, at present there are different approaches among authorities, businesses and the legal community on how to apply the new rules. Moreover, the authorities sometimes change their position. It is disputable, in particular, to which extent use of cloud solutions or ‘mirror databases’ outside of Russia is allowed.

² Federal Law No. 405-FZ dd. December 2, 2019.



wording of the law allows a broad interpretation and imposition of fines linked to the number of non-localized databases, which can potentially lead to a substantial increase in the amount of fines. However, much will depend on the first practice of implementation by authorities of the new law.

As a general rule, Roskomnadzor (the supervising agency in personal data protection) issues prescriptions to eliminate violations. At the same time, the process of shifting databases to Russia is usually time-consuming and may require significant modification in business processes. Therefore, failure to fulfill these prescriptions can lead to additional fines, as well as the disqualification of company officials (e.g. general managers) for several years.

2. Blocking access to a website

There is an official register of websites containing information processed in contravention of the Russian legislation on personal data - the Register of Personal Data Infringers. The regulatory body may limit access to the websites included in the Register upon a court decision.

This risk is of high importance in the context of the data localization rule for the companies using websites as the main instruments of their business activity, such as online stores, portals for distance learning, booking services, etc. It should be mentioned that the blocking of a website may also be applied to an Internet resource owned by a foreign company without any legal presence in Russia.

RECOMMENDATIONS

- 1 Examine current solutions used for personal data processing as related to their compliance with Russian law and, if necessary, adjust them to reduce the risks of incompliance with the data localization rule.
- 1 Continue to keep an eye on the regulators' guidelines and compliance practices.

Authors: Elena Agaeva, Counsel, and Elena Kvartnikova, Associate

Contacts



Elena Agaeva

Counsel, Head of M&A and corporate practice (St. Petersburg)

elena_agaveva@epam.ru
+7 (812) 322 9681

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