



SEPTEMBER 2017

## PROBATE LAW REFORM: MAINTAINING ESTATE FUNDS

**Federal Law No.259-FZ dated July 29, 2017 (the “Law”) introduced significant amendments to the Civil Code of the Russian Federation (“the Civil Code”) in regard to the regulation of inheritance-related matters. One of the key novelties was the emergence of a new tool – estate funds.**

The Law provides for procedures to set up an estate fund, determines the legal status of its beneficiaries and sets forth procedures for managing the fund. The Law will take effect on September 1, 2018.

### I. THE CONCEPT OF AN ESTATE FUND

An estate fund means a fund created in a manner prescribed by law in pursuance of an individual's last will and testament based on his/her property and intended to **manage such individual's property** obtained by way of inheritance.

A fund may be set up for an indefinite period of time or for a specific period of time pursuant to such estate fund's management terms.

### II. ESTABLISHING AN ESTATE FUND

An estate fund may be set up after an individual's death only. All administrative formalities related to the establishment of a fund are fulfilled by a notary public who runs the probate case.

The Law sets forth a number of requirements to the contents of a last will and testament that provides for the creation of an estate fund. Such a **last will and testament must include:**

- 1) testator's decision to set up an estate fund;
- 2) fund's bylaws;
- 3) estate fund's management terms.

As for an **estate fund's management terms**, the following details must be specified:

- fund's beneficiaries or certain categories of persons entitled to the fund's property or its part, including revenues from the fund's activities, upon the occurrence of the circumstances specified in a last will and testament;
- type and size of property to be transferred to beneficiaries or procedures to determine the type and size of such property, including property interests (for example, rights to use property, entitlement to payment for services rendered by third parties to beneficiaries or certain categories of persons);
- duration or frequency of transferring property to the fund's beneficiaries;



- circumstances triggering the transfer of property to the fund's beneficiaries.

It is important to note that the Law **does not permit any amendments** to be made to an estate fund's bylaws and terms of its management once it has been set up. Amendments may be made only **pursuant to a judgment** as requested by any governing body of a fund in the following cases:

- management of an estate fund has been rendered impossible based on the previous terms for reasons that could not have been foreseen at the time of the fund's creation;
- a beneficiary is found to be an unworthy heir (Art.1117 of the Civil Code) unless such a circumstance has been known at the time of the estate fund's creation.

### III. ESTATE FUND'S GOVERNING BODIES

An estate fund's governing bodies include:

- a sole executive body of an estate fund;
- a collective body of an estate fund.

A fund's bylaws may provide for the creation of a collective body and a board of trustees.

Any individual or legal entity except for the fund's beneficiary may act as an estate fund's sole executive body or a member of its collective governing body. However, a fund's beneficiaries may sit on the fund's supreme governing body.

Members of an estate fund's governing bodies may be replaced as prescribed by its bylaws. A fund's bylaws may provide for procedures to select members of the estate fund's governing bodies in the event of their resignation or removal, including by nominating such persons from a specific list.

An estate fund's management terms may provide for payments and remuneration to members of the fund's government bodies for performing their duties.

### IV. ESTATE FUND'S BENEFICIARIES

An estate fund's beneficiaries may include any persons except for business entities. A fund's beneficiaries shall be **entitled to**:

- request and obtain information from an estate fund as to the fund's activities in the cases contemplated by the estate fund's bylaws;
- request an audit of an estate fund's activities to be conducted by an auditor selected by them.

A beneficiary's rights will be **unalienable** and cannot be enforced over a beneficiary's obligations. Any transactions consummated in breach of such rules will be **void ab initio**. Rights of an estate fund's individual beneficiary **will not be inheritable** while rights of an estate fund's corporate beneficiary will be **terminated** in the event of its reorganization (except for transformation unless an estate fund's management terms provide for termination of such beneficiary's rights).

After an individual beneficiary dies or a corporate beneficiary is wound up and if a beneficiary executes a notarized waiver of his/her entitlement to an estate fund's property, **new beneficiaries** will be selected pursuant to the estate fund's management terms, in particular, they may be selected by way of a substitutional bequest.



No beneficiary will be liable for an estate fund's obligations and no fund will be liable for any obligations of its beneficiaries.

## V. MANDATORY SHARE IN INHERITANCE AND ESTATE FUND

An heir entitled to a mandatory share and being an estate fund's beneficiary **forfeits his/her entitlement to a mandatory share.**

However, if such an heir executes a notarized waiver of all of his/her rights as an estate fund beneficiary within the time period set to accept succession, he/she will retain his/her entitlement to a mandatory share.

In such circumstances, a court is authorized to reduce such an heir's mandatory share if the value of property owed to him/her as a result of succession significantly exceeds the amount of money required for such a person's subsistence subject to his/her reasonable needs and his/her existing obligations owed to third parties as of the date of commencement of succession.

## VI. LIQUIDATION OF AN ESTATE FUND

Apart from general grounds for liquidation by a court order for all legal entities, the Law envisages **special grounds** to liquidate an estate fund:

- expiry of the time period for which an estate fund has been set up to exist;
- occurrence of circumstances specified in an estate fund's management terms;
- an estate fund's governing bodies cannot be formed.

When **deciding on the destiny of any property** remaining after liquidation of an estate fund, the following should be taken into account:

- if the estate fund's management terms envisage special procedures for distributing the property remaining after liquidation, such property must be transferred to the persons specified in such terms, including persons who are not beneficiaries;
- in the event that no special procedures exist, such property is to be transferred to beneficiaries pro rata to their entitlements to property and revenues from the fund's activities;
- in the event that the persons entitled to the remaining property cannot be identified, the ownership to such property will be conveyed to the Russian Federation pursuant to a judgment.

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