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Agency, Representation, Delegation and Commission

By Vladimir Orlov[*]
Vladimir Popondopulo[†]

Revised rules of Russian law on representation and agency aimed at modernizing the civil law regulation contain novelties, including irrevocable power of attorney, as well as changes to the provisions on authentication of power of attorney and delegation and termination of authorization and commercial and unauthorised representation. Furthermore, power of attorney may be issued for indefinite period of time in Russia. The revised rules of Russian law on representation and agency reflect modern regulation influenced by the convergence of the continental and the common law. At least, their content has become more comprehensive for common law lawyers.

Keywords: *representation, agency, delegation, commission, authorization*

Introduction

In Russian law, agency, representation, delegation, and commission are the basic concepts of what is known as agency at common law. These concepts are subject to the application of general provisions of the Civil Code, as well as its special rules regulating representation and power of attorney,[2] delegation,[3] commission,[4] and agency.[5] Also, the Civil Code provides rules on actions without delegation in the interest of another person and unauthorised representation.[6] The rules concerning representation, in particular, have been significantly changed as a part of a new revision of the Civil Code, which started in the end of 2012 and is aimed at modernizing the civil law regulation.

"Agency" and "representation" are basic terms of Russian civil law and they are fixed in civil legislation.[7] Also, the terms "intermediation" and "intermediary activity" appear, in particular, in legal and economic literature.[8]

[*] Adjunct Professor, University of Helsinki, Helsinki, Finland.
[†] Professor, Saint Petersburg State University, Saint Petersburg, Russia.
[2] Russian Civil Code, Part 1, Ch. 10, arts. 182–89. The amendments concerning representation have been included in Law No. 100-FZ of 7 May 2013. In English, they are presented on http://sites.edechert. com/10/1763/landing-pages/summary (last accessed Feb. 12, 2016).
[3] Russian Civil Code, Part II, Ch. 49, arts. 971–79.
[4] *Id. at* Part II, Ch. 51, arts. 990–1004.
[5] *Id. at* Part II, Ch. 52, arts. 1005–11.
[6] *Id. at* Part II, Ch. 50, arts. 980–89.
[7] *Агентирование* (agency); *Представительство* (representation).
[8] *Посредничество* (intermediation); *Посредническая деятельность* (intermediary activity). For more on the subject see e.g., Pak (2006) and Galushina (2005).

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At present, representation is understood in Russian law, as elsewhere, as an external relationship between a principal and a third party who has entered into a legal relation with the principal through the acts of an agent.

Thus, representation is distinguished from delegation or mandate contract,[1] which purports to regulate an internal relationship between the delegate or agent, and the delegator or principal, and which is necessary for representation, serving as an agreement.[2] This is the case for voluntary direct representation (agency), and it concerns, under Russian law, transactions and other legally significant actions. In respect to business activities, commercial representation—regarded in Russian law as a modification of voluntary representation—is important. Indirect representation is also recognised by Russian civil law, and it is represented by a commission (agency) contract where the agent acts in his own name.[3]

The term "agency" is used in present Russian civil law in a narrow sense, meaning a modification of delegation or commission depending on whose name the agent acts in. Agency,[4] specifically, as regulated by the Russian Civil Civil Code, covers not only legal actions (transactions), but also real (factual) acts (actions),[5] and the distinction between the two is legislatively fixed by excluding commercial and other intermediaries from being representatives.

The term "intermediation," also used in Russian civil law, has both a broad and a narrow meaning.[6] Narrowly defined, intermediary activities are restricted restricted to indirect representation. It follows, then, that intermediation is distinguished from representation in the Russian legislation. According to the rules on representation, representative acts are in the name of, and on behalf of, the representee; whereas intermediation traditionally means an intermediary acting independently from the parties involved in his own name, and his (agreement-based or contractual) obligations concern factual services for the contracting parties. The term "intermediary activities" is also used in Russian law in other contexts. In particular, it is represented in the concept of commercial intermediation produced by the legal doctrine. According to the doctrine, commercial intermediation can take the form of various types of contracts, such as delegation, commission, agency, and entrusted administration, as well as commercial concession and freight forwarding. This list can be enlarged by contracts that are not directly regulated by the law, including exclusive sale, distribution, and simple and occasional agency contracts. As most broadly understood, commercial intermediation also includes representation in Russia.

Thus, this article attempts to reach some convergence with the concepts of the common law and uses the conceptual framework of what is meant by agency at common law. The Russian concept of representation, including

[1] *Договор поручения* (trust deed).
[2] Sergeev (2009a) p. 696.
[3] *Договор комиссии* (commission agreement).
[4] *Агентский договор* (agency contract).
[5] Thus, an agency contract, as understood at common law, for a Russian lawyer, can mean not only an agency contract, but also a delegation and commission contract.
[6] *See e.g.*, Galushina (2006) pp.139-147.

delegation, is concerned with issues related to direct representation where the agent acts in the name and interest of the principal. As to instances where an agent acts in his own name, he is subject to the rules regulating commission or indirect agency. In turn, the purpose of the rules on agency, in the narrow sense, is to regulate cases where the activity of the agent concerns not only legal, but also real actions (acts). However, in the default of legal actions in the relationship, there is no representation, delegation, commission, or agency relation, but only intermediation under Russian law. Therefore, without prejudice to the Russian civil-law dogmatics,[1] the Russian legal rules regulating these concepts are constructed in this article in the following sections.

Representation and Delegation as Direct Agency[2]

The Concept Of Representation

According to the rules on representation and power of attorney of the Civil Code, in the event of representation, a transaction concluded by one person (representative) in the name of another person (representee)—by virtue of the power based on the power of attorney, on provision of the law, or on an act issued by a state or local self-government body empowered thereto—directly creates, changes, or terminates the civil rights and duties of the representee.[3]

Russian civil law recognises representation as obligatory or voluntary (discretionary). According to the Civil Code, obligatory representation is grounded in the law (statutory representation), and can be seen in the representation of a minor, an incompetent minor, or an incompetent person,[4] or or in an administrative act issued by an authorised state body, local self-government, or some other body (i.e. representation based on administrative act). The grounds for voluntary representation (contractual representation) or authority may be, in turn, a delegation contract (delegation authorization) or a power of attorney (power of attorney authorization).[5] Moreover, commercial representation is regarded as a modification of voluntary representation in Russian law, and the rules on it are contained in a special norm of the Civil Code.[6] For voluntary representation, the representation powers of the representative are determined in accordance with the will of the representee.

[1] However, damage to Russian legal teachings could hardly occur, since participation in the legal discussions in Russia requires the use of Russian language, for English is still a subsidiary, if not useless, language for Russian lawyers.
[2] For more on the subject, see, for instance, Sergeev (2009a), Suhanov (2007) and Braginsky & Vitryansky (1999). See also Alekseev (2016) and Zenin (2015) as well as commentaries, for instance, Stepanov (2016).
[3] Russian Civil Code, art. 182.1.
[4] *Id.* at arts. 28–29.
[5] *Id.* at arts. 185–89.
[6] *Id.* at art. 184.

In a representation relation there are three parties: the representee or principal, the representative, and a third person. In the relationship, necessary acts are made by the representative, but their results arise to the principal. Furthermore, representation concerns transactions or legally significant but not factual acts, wherefore the representative may only act if he has legal capacity as a physical or juristic person. Thus, in order to act as a representative of a representation or branch office of a juristic person, its director needs power of attorney.[1] Since the representative acts in the name of the principal, his acts give rise to rights immediately and directly to the principal; this is a kind of fiction, in accordance with which the acts of another person cause to the principal the same consequences as if he acted himself. In general, the concept of representation stands for the notion that the principal determines, by his will, the authority of the representative and thereby concludes, by his will, the contract.

Representation Parties

In representation, a representee can be a physical or juristic person for whom the representative makes transactions in the name and on behalf of. Under Russian law, a physical person may be represented from the date he is born. A juristic person can be represented from the date it is duly established.

A representative can be either a physical or juristic person who has the authority to make legally significant acts in the name and on behalf of the principal. In order to act as a representative in Russia, a physical person must be legally competent except in some cases concerning labor relations or membership in an association or cooperative. Additionally, Russian civil process legislation contains some limitations concerning the rights of judicial officers and disqualified advocates to participate as representatives in court proceedings. A chief bookkeeper is prohibited from receiving liquid and other assets of an enterprise from the bank through a power of attorney. Juristic persons who have special legal capacity may act as representatives if it is not contradictory to the objects of their activities, as determined by the law or by their constituent documents.

Under Russian law, third person or party linked to representation is a physical or juristic person, with respect to whom the principal's rights and duties are created, changed, or terminated through the acts of the representative. A third person can be any person who enjoys a civil law capacity.

In representation, the following legal relations arise between the principal, representative, and third person:

- the relation between the representative and principal;
- the relation between the representative and third person; and
- the relation between the principal and third person.

[1] *Id.* at art. 55.3.

The relation between the representative and principal is an authorization relation in which the representative's powers are defined, and which is in the nature of obligation law. In Russian civil law, this is considered the internal part or relation of the representation. In turn, the relation between the representative and third person where the powers of the representative occur is regarded as the external part or relation of the representation.[1] In Russia, the relation between the principal and third person is not regarded as properly belonging to the concept of representation, because it simply concerns the result of the executed representation.[2]

Representation Boundaries

Representation comprehends that the representative makes transactions on behalf of the principal by realizing his will. The transactions made by the representative are his own discretionary acts, which at the same time create, change, or terminate the civil law rights and duties of the principal. Owing to this feature, the representative is distinct from the governing bodies of juristic persons in Russian law. In accordance with the Civil Code rules on bodies of juristic persons,[3] a body of a juristic person stands for a separate part of its structure that is not an independent civil law subject. This is enforced in Russian judicial practice, wherefore the acts made by the body of the juristic person are considered as having been made by the juristic person, itself.[4] One characteristic of the body of the juristic person is that it is capable of shaping the will of the juristic person.[5]

Because the transactions made by a representative are his discretionary acts, the representative's legal capacity requirements are stricter than normal. Furthermore, the invalidity of the transactions made by him is directly dependent on the fact that no mistake has occurred with respect to the formation of his will and whether it is expressed properly. Thus, a representative is distinct from a courier, who, unlike a representative, does not conclude transactions, but instead delivers the documents, information, or, for instance, the acceptance to conclude an agreement sent by the sender.

Representatives are also distinct from persons who act on behalf of others in their own name, as well as from persons who are delegated to be present in negotiations concerning transactions to be possibly concluded in the future. The circle of such persons is very large. It includes commercial and other intermediaries, arbitration administrators in insolvency proceedings, will executors, and acceptors of a transaction. The Civil Code rules expressly provide that persons who operate in the interest of other persons, but in their

[1] *See* Abova, Boguslavsky, Kabalkin & Lisicin-Svetlanov (2007) p. 204.
[2] Sergeev (2009a) p. 527.
[3] Russian Civil Code, art. 53.
[4] See Вестник Высшего Арбитражного Суда Российской Федерации [*Herald of Supreme Arbitrazh Court of Russian Federation*] (1999) p. 66.
[5] Stepanov (2016) p. 74.

own name, persons who only transfer a properly expressed will of another person, and persons authorised to enter into negotiations regarding possible future transactions are not regarded as representatives (Article 182.2).

Under Russian law, an intermediary acts in his own name and contributes to conclusion of a contract through searching out possible contracting parties or collecting or giving information concerning the contract. Despite his intensive activities, the intermediary does not carry out any legally bound acts that directly create rights and duties for the other involved persons. Such transactions arise directly through the expression of intents by the parties.

The activities of the commission agent are similar to those of the representative, since a commission agent also carries out civil law acts on behalf of the principal. However, a commission agent acts in his own name, the rights and duties belonging to the buyer or seller arise solely to him, and only later, does he transfer them to the principal. The authority of an arbitration administrator in insolvency proceedings also includes the commissioning of legally significant acts, and, although he makes these in his own name, he acts in favor of both the bankrupt *and* his creditors. An executor of a will also acts in his own name and his acts have legal impact on third persons.

A person whose approval or permission is required for conclusion of a transaction is not regarded as a representative, since the task of such a person is to make sure that the transaction is reasonable and appropriate. A guardian holds a similar position: his consent is required, for instance, for transactions concluded by his ward. Under Russian law, the owner of a treasury enterprise, that is the state, has a similar position in the event of alienation of its property not belonging to its products.

Representation Powers

In Russian law, the representation powers, authority, or capacity of the representative stands for his capacity to conclude transactions in the name and on behalf of the principal, which is determined by the legal facts that gave birth to the representation. By their origin and legal nature, representation powers comprehend a subjective right derived from the principal's legal capacity that is delegated to the representative, either through a discretionary act of the principal, or based upon the facts provided by law. Consequently, the representative's use of the representation powers must be regarded as legal facts, upon which the rights and duties arise to the principal. However, acts of the representative only create, change, or terminate the civil law rights and duties of the principal on the condition that the representative acts within the scope of his representation powers. In the event he exceeds this scope, the transaction concluded by him with the third person will not, in principle, bind the principal.

When evaluating the acts of the representative in which he executes his representation powers, attention is paid to mistakes of his will and the will of the principal, since their consequences are different. If a mistake has occurred in the formation of the representative's will, it may invalidate a transaction the

representative concluded in the name of the principal. By contrast, a mistake concerning the principal's will may result in no contract forming between the principal and third person. However, this does not prevent the contract from being validated by acceptance of the principal, in accordance with the Civil Code Article 183 rules concerning unauthorised representation.

In the execution of his representation powers, the representative is obliged to follow the principal's interests; therefore, he is not allowed to conclude a transaction in the name of the representee in respect of himself, personally, or a transaction in which he is the other party (i.e., self-dealing or self-contracting). He also may not conclude a transaction with respect to another person whom he simultaneously serves as a representative for (concurrence of authorities), except in cases of commercial representation.[1] Upon a claim by the principal, a court may invalidate a transaction made without the principal's consent that violates the self-contracting or the concurrence of authorities' prohibition, provided that the principal's interests are violated. Violation of the principal's interests is presumed, unless otherwise proven.[2]

The Emergence of Representation and its Forms

The relation between representative and principal arises on the grounds of legal facts, which also have impact on the emergence and extent of the representation powers. In Russian law, these grounds include:

- the expression of the principal's will providing authority to the representative that transpires either in the contract or power of attorney;
- an act of a state or local self-government body empowering a person to act on behalf of another person as a representative; or
- some other fact that is a sufficient provision, according to the law, to bestow upon a person the authority to represent another person.

In accordance with these legal facts, there is representation based upon contract, administrative acts, and the law. Additionally, representation relations may be grounded on an authorization based on the position held.

Contracts where representation may arise are contained in the Civil Code, and include delegation and agency.[3] The power of attorney given by the principal to the representative is usually regarded as a unilateral transaction that bestows the representation powers upon on the representative. Representation grounded both in contract and in power of attorney or authorization, can be characterised as discretionary representation. The discretionary or non-mandatory nature of representation arises from the expression of the representee's will, which determines not only whom he authorises as a representative, but also the powers of such authority. Moreover,

[1] Russian Civil Code, art. 182.3.
[2] *Id.*
[3] *Id.* at arts. 971–79 (delegation) and arts. 1005–11 (agency).

the representative acts in the representee's name in accordance with his own will.

According to the Civil Code, authority may transpire in circumstances where the representative acts based on the position held.[1] Such powers are commonly linked to the acts of sales clerks or cashiers in the retail trade, where such persons execute acts in the name of their employer in a certain place or in a certain order, often using certain identification marks. Thus, anyone who comes into contact with such a person is certain that he is a person who represents the firm. Any person whom the employer has allowed to work—for instance, to perform a service in circumstances that clearly indicate authorization based on the position—must be regarded as a representative of the firm.[2]

Contractual Authorization: *Delegation and Agency*

Under contract of delegation—the main form of contractual authorization—one party, or the delegate (agent), is obligated to perform defined legal actions in the name and at the expense of the other party, or the delegator (principal).[3] A delegation contract serves as a ground for representation and may be characterised as a representation contract. The Civil Code directly provides that a legal action (transaction) made directly by the delegate or representative gives rise to the rights and duties of the delegator and the term "legal action" is used in a broad sense, meaning any acts that cause legal consequences, including representation in court.[4] These acts form the object of the contract, which is its essential condition.[5] The delegation contract is a reciprocal, consensual contract, and, at the general civil law level, it is presumed to be uncompensated, unless otherwise provided by law or contract; however, if the delegation contract is connected to entrepreneurship—usually commercial representation[6]—it is presumed to be compensated, unless otherwise stipulated by a contract.[7] In general, delegation contracts are usually considered to be fiduciary, based on the loyalty of the parties.[8] The personal and confidential nature of the contractual relations is presumed in the delegation contract;[9] therefore, the contracting parties may not waive their rights to dissolve the contract, making it dissolvable at any time.[10]

In instances where a representative is expected to do real acts (actions) in addition to legal actions (transactions), his activities are subject to the Civil

[1] *Id.* at art. 182.1.
[2] Suhanov (2007) p. 547–50.
[3] For more on the subject see, in particular, Sergeev 2 (2009) p. 696–707.
[4] Stepanov (2010) p. 879.
[5] Stepanov (2016) p. 935.
[6] *See* Popondopulo (2009) p. 422.
[7] Russian Civil Code, art. 972.
[8] *See e.g.*, Sergeev (2009b) p. 696–97.
[9] Stepanov (2010) p. 879.
[10] Russian Civil Code, art. 977.

Code rules regulating agency contracts.[1] According to Article 1005 of the Civil Civil Code, in an agency contract, one party or the agent is obligated by compensation to perform, on delegation from the other party or the principal, legal or other actions in the name and at the expense of the principal.[2] According to Article 1011 of the Civil Code, the agency contract is to be subsidiarily governed by the rules regulating delegation where the agent acts in the name of the principal.

Authorization of the Power of Attorney

The rules concerning authorization of a power of attorney are contained in the norms of the Civil Code on representation and power of attorney.[3] They also define the concept of power of attorney as a written authorization issued by one person to the other person for representation before third persons.[4] A power of attorney is a document in which representation powers or capacity to conclude a transaction and other legal acts, as well as their content and limits, are defined. A power of attorney is addressed to third persons, and it certifies the representation powers of the representative. In other words, the representation powers of the representative become clear to a third person from the power of attorney. The rules regulating powers of attorney are also applied in cases where the representative's representation powers are grounded in an agreement, including one between the representee and representative, the representee and third person, or upon the meeting's decision, unless otherwise provided by law, or if it contradicts the nature of the relation.[5]

Powers of attorneys are mostly issued to certify discretionary powers. However, if it is based on a contract between the representee and representative, then, by legal nature, an issuance of power of attorney is a unilateral transaction made by the representee in accordance with his own discretion. Thus, the issuance of a power of attorney—which is, in general, the duty of the delegate or principal in delegation—and it becoming effective does not require consent of the representative, because the representation powers do not concern his own civil law rights; rather, they grant him the right, grounded in the power of attorney, to act in the name and on behalf of the representee. On the other hand, the power of attorney itself does not give rise to any representation powers of the representative before he voluntarily accepts the power of attorney and thereby agrees to fulfill the authority. Thus, in Russian law, the issuance of power of attorney to a representative is not a precondition for representation. According to the Civil Code, written authorization for conclusion of a transaction by a representative may be given by the representee directly to the respective third person, who has the right to ensure the identity

[1] For more on the subject see, in particular, Sergeev (2009b) p. 722–28.
[2] Or in his own name but at the expense of the principal, where agency is related to commission.
[3] Russian Civil Code, art. 185-89.
[4] *Id.* at art. 185.1.
[5] *Id.* at art. 185.4.

of the representative and may note this on the document testifying the representative's power.[1]

The purpose of a power of attorney, in contrast to a contract regulating the relationship between representative and representee, is to secure the external effect of the representation, or to establish through the acts of the representative the legal relation between the representee and third person. The third person gains knowledge from the power of attorney about what representation powers the representative has. By contrast, the contract, or other legal fact, through which the power of attorney is given does not concern third persons.

Any transaction or other act of legal nature that the representative makes within the limits of the authorization given to him is binding on the representee. The representee may not refuse fulfillment of a contract entered into on the grounds of the power of attorney by referring to the fact that the representative has broken the authorization contract concluded with him—for instance, by deviating from the instructions given to him, unless they are written in both the contract and the power of attorney. In other words, in the event of a contradiction between the contract—defining the internal relations between the representative and representee— and the power of attorney given to the representative, the rights and duties of the representee—deriving from the contract concluded by the representative with the third person—are determined according to the representation powers (capacity), as defined in the power of attorney, and not those written in the representation contract (competence). However, when a mistake is made in the formation of the will of the representative, the transaction could be regarded as invalid.

As a general rule, only fully legally competent persons may issue a power of attorney. A juristic person who has special legal capacity may issue a power of attorney for the conclusion of transactions that are not contradictory to the objects of its activities imposed by law. In turn, commercial juristic persons provided, by law, with general legal capacity may issue a power of attorney for the conclusion of any transaction, so long as it takes into account the requirements imposed by the law. However, where the objects of the activities of the commercial juristic person are determined in its constituent documents, and it issues the power of attorney for a transaction that is contradictory to those objects, the power of attorney may be disputed in accordance with rules of the Civil Code concerning the invalidity of such transactions.[2]

In general, the person who issues a power of attorney or representee may cancel it at any time, according to the Civil Code;[3] this also applies to a power of attorney connected with a delegation relation. The representative may also refuse the power of attorney at any time. This rule, however, does not concern irrevocable power of attorney, which will be presented later.

A power of attorney may be given to several representatives. In such a case, each of the representatives enjoys the powers provided in the power of

[1] *Id.* at art. 185.3.
[2] *Id.* at art. 173.
[3] *Id.* at art. 188.1.

attorney, unless it requires that they exercise the power jointly.[1] The power of attorney may be also issued by one or more persons simultaneously, and in this case, is subject to the rules regulating power of attorney[2]

The content and extent of the representation powers in the power of attorney given by the representative are divided into general, special, and single power of attorneys. A general power of attorney empowers a representative to conclude different transactions in general, largely connected with the activities of the representee. Such a power of attorney is issued, for instance, to the director of a branch office of the juristic person. A special power of attorney, in turn, empowers the representative to execute a bulk of similar transactions or transactions connected with the specified field of activity of the representee. Such a power of attorney is issued, for instance, for court representation or receipt of cargo from a carrier. Single power of attorney is issued for a specified transaction—for the signing of a contract, for instance.[3]

The form requirements for power of attorneys are provided in the rules of the Civil Code.[4] As a general requirement, a power of attorney must be in written form, even though the contract for which the power of attorney is given may be concluded in oral form. "Written form" is understood as a simple written form provided for transactions under the Civil Code.[5] In accordance with the rules, a power of attorney may be made through preparation of a document expressing its content and signed by the representee;[6] a power of attorney may also be made in the form of a letter, telegram, or telefax, or contained in the contract containing the representative authorization. In any event, the document must express the question of the power of attorney, and must also contain defined representative powers and other requisites provided for the power of attorney. In some cases, under the Civil Code, the power of attorney must also be authenticated by a notary under threat of nullity of the transaction.[7]

Powers of attorney issued by juristic persons are subject to specific rules. A power of attorney in the name of a juristic person must be issued under the signature of its director, or another person authorised by law, and in its constituent documents.[8] On the other hand, the regulation on the unit of the juristic person and its rights to make contracts are considered in Russian judicial practice as being equal to written authorization.[9]

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[1] *Id.* at art. 185.5.
[2] *Id.* at art. 185.6.
[3] Sergeev (2009a) p. 535-36.
[4] Russian Civil Code, art. 185.1.
[5] *Id.* at arts. 159–62.
[6] *Id.* at art. 160.1.
[7] *Id.* at arts. 163, 185.1.
[8] *Id.* at art. 185.4.
[9] Вестник Высшего Арбитражного Суда Российской Федерации [*Herald of Supreme Arbitrazh Court of Russian Federation*] (1995) 1 p. 83, and Вестник Высшего Арбитражного Суда Российской Федерации [*Herald of Supreme Arbitrazh Court of Russian Federation*] (1996) 6 p. 57.

A power of attorney must also meet other form requirements. The power of attorney must be dated. Under the Civil Code, a power of attorney that does not indicate its date of issuance is deemed to be null and void.[1] Consequently, not only the relation between representative and representee, but also all results of the actions made by the representative, including, of course, the transactions concluded with his participation, will be deemed invalid. Subsequently, the rules on restitution of invalid transactions contained in Article 167 of the Civil Code concerning the consequences of invalid transactions can be applied not only to the representative and representee, but also to the third person and representee.[2] According to the Civil Code, a claim for application of the consequences of an invalid (null and void) transaction may be presented by the party to such a transaction, and in certain cases, by other persons, as provided by the law.[3] Moreover, the court also has the right to apply such consequences on its own initiative, regardless if such a demand is presented or not; however, it may only do so if it is necessary to protect public interests or is otherwise allowed by law.

The period of validity of a power of attorney is not limited in the law. In the event the term is not defined within the power of attorney, it remains in force for one year from its date of issuance.[4] A notarised power of attorney for making transactions abroad that does not contain an indication of its term remains in force until revocation by the person who gave the power of attorney.[5]

Delegation of Authorization

Delegation of authorization is possible in Russian civil law, and the rules on it are contained in the Civil Code.[6] Re-delegation of authorization is not allowed under the Civil Code, unless otherwise provided in the initial power of attorney or established by the law.[7]

The rules on delegation of authorization provide that the person to whom a power of attorney is given must personally perform the actions that he is authorised to perform. He may transfer the power of attorney to perform them to another person in only two cases:

- if he is authorised by the power of attorney to do so; or
- if he is forced to do so by virtue of circumstances in order to protect the interests of the person who issued the power of attorney, provided that delegation is not prohibited by the power of attorney.[8]

[1] Russian Civil Code, art. 186.1.
[2] See Abova, Boguslavsky, Kabalkin & Lisicin-Svetlanov (2007) p. 207.
[3] Russian Civil Code, art. 166.3.
[4] *Id.* at art. 186.1.
[5] *Id.* at art. 186.2.
[6] *Id.* at art. 187.
[7] *Id.* at art. 187.7.
[8] *Id.* at art. 187.1.

In principle, it seems obvious that the representee may, at any moment, allow for delegation of the power of attorney by authorizing the representative to do so in answer to the request of the representative, or on his own initiative.

In a delegation of authorization, the original representative is replaced by another person who will execute, in the name of the representee, the actions determined in the initial power of attorney, in part or in whole, temporarily or during the entire period of the power of attorney. Thus, as a consequence of the delegation of authorization, an authorization relation arises between the representee and the person to whom the original representative delegated his representative powers. Owing to this, and taking into account the personal nature of authorization, the Civil Code provides that the person who transferred authorization to another person must notify, in reasonable amount of time, the person who issued the initial power of attorney, and communicate necessary information about the transferee of the powers.[1] This includes not only his personal data, but also his professional competence and moral proprieties if these are required for performing the representation tasks. Notification of the delegation must be made as soon as possible, and the representee has the right to revoke the delegation of authorization. The original representative is not liable for the actions of the person to whom he has transferred his powers. However, if the representative fails to notify the representee of the delegation of authorization, he is liable for the actions of the transferee in the same way as for his own actions.[2]

In accordance with the Civil Code, the term of validity of a power of attorney issued by a transfer of powers may not exceed the term of the original power of attorney.[3] A delegated power of attorney must be notarised, except for powers of attorney issued by way of a transfer of powers by juristic persons or by the heads of branch or representative offices.[4] Thus, enterprises are not obliged to notarise powers of attorney.[5]

According to the Civil Code, the original representative who delegated his representative powers to another person does not waste his powers, unless otherwise provided by the initial power of attorney or established by the law.[6] Moreover, all restrictions concerning the authorization of delegation remain in force, due to the derivative nature of it. So the general civil law principle that *no one can give another a better title than he himself has*, also concerns delegation of authorization.

[1] *Id.* at art. 187.2.
[2] *Id.*
[3] *Id.* at art. 187.4.
[4] *Id.* at art. 187.3.
[5] Stepanov (2016) p. 265.
[6] Russian Civil Code art. 187.6.

Termination of Authorization

The grounds for termination of an authorization granted with a power of attorney are listed in the Civil Code.[1] According to the Code, the validity of a power of attorney terminates as the result of:

- expiration of the term of the power of attorney, or upon performance of the transaction subject to a single power of attorney;
- revocation of the power of attorney by the person or persons who issued it;
- renunciation to execute the mandate by the person the power of attorney was issued to;
- termination of the juristic person in whose name or to whom the power of attorney was issued, as the result of its reorganization in the form of division into several juristic persons, merger with, or accession to another juristic person;
- death of the physical person who issued the power of attorney, declaration of his lack of dispositive capacity or limited dispositive capacity, or as missing;
- death of the physical person to whom the power of attorney was issued, declaration of his lack of dispositive capacity or limited dispositive capacity, or as missing; and
- the representative or representee being subjected to a bankruptcy procedure where he has wasted his right to independently issue powers of attorney.[2]

A representee may revoke a power of attorney and a delegation of authorization, and the representative may withdraw from the mandate at any time. An agreement to waive these rights is null and void.[3] This, as well as the other grounds for termination of a power of attorney, rests on the fact that the authorization is considered a fiduciary transaction based on special personal confidential relations in Russian civil law. If these relations lose their confidential nature, both parties have the right to withdraw from them.[4] Unrestricted cancellation rights are also provided for the delegator and delegate in the Civil Code norms regulating delegation, which expressly provide that the delegator has the right to cancel the delegated task, and the delegate has the right to refuse it at any time, and these rights are non-waivable.[5]

Termination of a power of attorney comprehends cessation of the representation powers or authorization of the representative, wherefore certain duties arise to both representee and representative.[6] According to the Civil

[1] *Id.* at art. 188.
[2] *Id.* at art. 188.1.
[3] *Id.* at art. 188.2.
[4] Sergeev (2009a) p. 536.
[5] Russian Civil Code art. 977.2.
[6] *Id.* at art. 189.

Code, if the representee revokes the power of attorney given by him, he must give notice of the revocation to the representative and third persons known to him, with respect to whom the power of attorney was issued for. The duty to give notice of revocation is also imposed upon the legal successors of the representee in the event the power of attorney terminates because of the termination of the juristic person, death of the physical person, or declaration of him lacking or having limited dispositive capacity or as missing.[1] Information about the revocation of a power of attorney may be published in the official publication devoted to bankruptcy data. For this purpose, the signature on the application for the revocation of power of attorney must be notarised. Third persons are considered informed of a revocation of a power of attorney after the expiry of one month from the day of publication, unless they were informed earlier.[2] The third person's knowledge of the termination is crucial for the fate of the transaction he has concluded through the representative—according to the Civil Code, the rights and duties arising from the actions of the person whose powers were terminated may remain in force for the representee and his legal successors if the power of attorney was presented to a third person who did not or should not have known about its termination.[3] Thus, the *bona fide* party and stability of relationship are protected in such a case.[4]

Irrevocable Power of Attorney

With respect to the obligations connected with entrepreneurial activity, the Civil Code provides novel rules on irrevocable powers of attorney.[5] They are purported to secure performance of the representee's entrepreneurial obligation from the representative or persons in whose name and interests of the representative acts.[6] According to these rules, a representee may indicate in the the power of attorney given to the representative that it is not revocable until it is in force, or that it can only be revoked in specified cases.[7] Nevertheless, an irrevocable power of attorney can also be revoked if the obligation secured by it has been terminated, if the representative abuses his powers, or if circumstances obviously prove that such an abuse could occur.[8] Irrevocable

[1] *Id.* at arts. 188.1, 189.1.
[2] *Id.* at art. 189.1.
[3] *Id.* at art. 189.2.
[4] Stepanov (2016) p. 267.
[5] *Id.* at art. 188.
[6] Entrepreneurial activity is comprehended in Russian law in a narrow sense, excluding corporate relations. Therefore, obviously, an irrevocable power of attorney may not be used in corporate relations, in particular, where the parties of the operating agreement are non-entrepreneurs. *See e.g*, Besedin (2014) p. 7.
[7] Thus, an irrevocable power of attorney may be issued for an indefinite period of time.
[8] Russian Civil Code, art. 188.1. Irrevocable powers of attorney are also subject to the general rule that the validity of a power of attorney terminates as the result of death of the physical person or termination of the juristic person who issued the power of attorney (Article 188.1).Where an irrevocable power of attorney is not purported to be used for the obligations connected with entrepreneurial activity, only the agreement on its irrevocability ought to be

powers of attorney must be notarised and include a provision on its restrictions of revocation.[1] The person given the irrevocable power of attorney is not allowed to delegate the execution of the acts he is empowered thereby, unless otherwise provided in the power of attorney.[2]

Special Rules on Commercial Representation

In Russian civil law, commercial representation is considered as a modification of discretionary or contractual representation, and special rules governing it are contained in the Civil Code norms regulating representation;[3] otherwise, commercial representation is subject to the general rules on representation. Additionally, the peculiarities of commercial representation in the domain of entrepreneurial activity may be established by the law and other legal acts.[4]

Specific features regarding commercial representation include:

- the special subjective part of commercial representation;
- the nature of transactions concluded by a commercial representative;
- the grounds of emergence of representation powers; and
- the content of the rights and duties of a commercial representative.[5]

The special rules on commercial representation can be explained by its specific nature, in particular, where the interests of the representee and third party are involved. Therefore, violation of the rules on commercial representation is regarded as a sufficient ground to treat a transaction made by the representative as unbinding with respect to the representee as well as the third party.

In particular, commercial representation stands apart because of its subjective part. Only an entrepreneur (i.e. a commercial organization or individual entrepreneur) may participate in commercial representation as a representee or principal. And, under the Civil Code, a commercial representative or agent is a person who permanently and independently acts as a representative under the name of other entrepreneurs and concludes contracts in the sphere of entrepreneurial activity—that is, a person who practices permanent and independent representation as entrepreneur.[6] Therefore, a

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recognised invalid. In respect to the rest, the power of attorney will continue to exist. *See* Zrelov (2013).

[1] Russian Civil Code, art. 188.2.

[2] *Id.* at art. 188.3. If, under the irrevocable power of attorney, delegation of authorization is allowed, its execution can occur by using an ordinary power of attorney of a juristic person signed by its director or another authorised person. *See* Zrelov (2013).

[3] *Id.* at art. 184.

[4] *Id.* at art. 184.3. For instance, special rules are provided by the Law on Organised Auctions 2011.

[5] Furthermore, commercial representation is of a compensatory nature and, in general, is intended to be permanent. *See* Stepanov (2016) p. 260.

[6] Russian Civil Code art. 184.1.

person in a labour relation with the representee may not be regarded as a commercial representative, even though he acts under the power of attorney given by his employer. The requirement of activity permanency, in turn, excludes non-commercial organizations, although they are allowed to practise entrepreneurial activities (which must be connected with the objects of their primary activities). Furthermore, because of the requirement that a commercial representative act on behalf of other entrepreneurs' the rules on commercial representation do not apply to insurance agents and patent attorneys, and their application to security markets is considerably limited. Other cases of compensated professional representation, including advocacy and bankruptcy administration, are not considered to be commercial representation, since they exclude simultaneous representation.[1] Thus, commercial representation ought to be distinguished from representation in commercial relations, even though the latter includes the former.[2]

Transactions concluded by a commercial representative, in turn, are commercial transactions—that is, transactions (contracts) between entrepreneurs, or in which at least one party is a subject of the enterprise activities, and through which the rights and duties connected to the enterprise activities arise, change, or terminate.

In turn, the basic ground for emergence of representation powers in commercial representation is the agreement—the delegation or agency contract—between the representee and representative; additionally, the rules on commercial representation are particularly considered to be a part of the Civil Code rules on delegation. Commercial representation is often grounded in both the contract and the power of attorney issued by the representee. It may never arise from the law or an administrative act, or merely from the power of attorney as a unilateral transaction that gives rise to a representative power in non-commercial representation.

Commercial representation is conducted on the basis of an agreement, usually a delegation contract, regulating internal relations between the representative and representee. It must be in a written form—a general requirement for entrepreneurial contracts in accordance with Article 161.1 of the Civil Code. The contract may contain indications of the representative's authority. A commercial representative may act by virtue of a power of attorney issued by the representee in the absence of a definition of the representative's authority in the representation contract, or if the content of the internal relationship between the representee and the representative is intended to be left undisclosed to third parties,

Contrary to the general rules on representation, a commercial representative is allowed to execute a simultaneous commercial representation of different parties to a transaction with the consent of these parties, and also in other cases as provided by law.[3] In the event of an organised auction,[4] it is

[1] *See* Suhanov (2006) p. 248.
[2] *See e.g.*, Karpychev (2002) p. 8.
[3] Russian Civil Code art. 184.2.
[4] Which is subject to the rules of Law No. 325-FZ of 21 November 2011.

presumed unless otherwise proven, that the representee has given his consent to simultaneous representation of the representative; but in the contract with the representative, the representee may express his non-consent.

Due to the general requirements imposed upon enterprise activities, and supported by the principle of fairness (*bona fide*), now expressly provided in Article 1 of the Civil Code as a general principle of the civil law.[1] Under that article, as an entrepreneur, a commercial representative is obligated to perform the tasks given to him with the care of an ordinary entrepreneur and without abusing his position and causing damage to the interests of the parties. As for a commercial representative simultaneously representing both parties, he must be impartial. Furthermore, a commercial representative must keep secret the information known to him concerning trade transactions concluded with his participation as a commercial representative.

On the other hand, there are special rules protecting commercial representatives, particularly in the norms of the Civil Code regulating delegation (contract) and concerning, for instance, the remuneration and retention rights of the representative.[2]

Unauthorised Representation

One prerequisite to representation in Russian law is, as stated above, that the representative actually has representation powers. However, sometimes transactions and other legally significant actions are made in the name and on behalf of other persons by persons who lack representation powers (unauthorised representation). Often, in such cases, there is not any kind of agreement on representation. In most cases, the issue concerns so-called false authorization in which case a person conceives of acting as a representative although, in reality, he has no authorization. For instance, such cases include acting by using a faulty or outdated power of attorney. Furthermore, exceeding the authorization determined in the power of attorney may be counted as a case of false authorization.

The rules concerning unauthorised representation or conclusion of a transaction by an unauthorised person are contained in Article 183 of the Civil Code. According to those rules, in the absence of representation powers to act in the name of another person, or where such powers are exceeded, a transaction is considered to be concluded in the name and interests of the person who concluded it,[3] unless the other person (representee) subsequently approves this transaction.[4] But, before the representee accepts the transaction, the third party may, according to the novelty provision of the Civil Code, unilaterally refuse it by giving notice to the person who entered into the

[1] Introduced by Law No. 302-FZ of 30 December 2012.
[2] Russian Civil Code arts. 972, 972.3.
[3] In such a case, it is obvious that the person who acted as a representative will bear contractual liability against the third party if he breaches his contract obligations.
[4] Russian Civil Code art. 183.1.

transaction, or to the representee;[1] this, however, does not concern cases when the third party, at the conclusion of the transaction, did not know or should not have known about the lack or excess of authorization. Furthermore, the third party is entitled to request an answer as to whether the representee intends to accept the unauthorised transaction. In the event the representee refuses to approve the transaction or his answer to the request to approve it has not arrived in reasonable time, the third party is entitled to demand from the person who acted without representation powers; the demand may include performance of the transaction or a unilateral refusal of performance and consequent compensation from him. However, such compensation is not due where the third party knew or should have known about the lack or excess of authorization.[2]

According to the Civil Code,[3] subsequent approval of an unauthorised transaction by the representee is a unilateral transaction that creates, changes, and terminates his civil rights and duties under the transaction from the moment of its conclusion.[4] Approval of a transaction made without authorization must be expressed in accordance with the general form requirements for transactions, either in writing, orally, or by actions proving it.[5] The approval must be addressed to the representative or third person who made the transaction. Moreover, it must be made in a reasonable time.

The term for approval of a transaction concluded without representation powers is of decisive significance. If the principal's approval arrives after the person who acted without representation powers, and later approved the transaction as his own or made in his name, has executed all preparatory acts for performance of the transaction or started its performance, such an approval has no more legal significance. In such a case, transfer of the rights grounded in the transaction to the principal (or to any other third person) may occur in accordance with the Civil Code rules regulating substitution of persons in an obligation.[6]

In the event the representee is a juristic person, the transaction concluded without representation powers must be approved by the juristic person's governing body, or by the person authorised to approve. However, in the case of a transaction made by the governing body of a juristic person that exceeds the limits of its legal capacity, the rules of the Civil Code regulating unauthorised representation are not applicable,[7] since the governing body of the juristic person is not a civil law representative of the latter. In such a case, Article 174 of the Civil Code, which is devoted to the consequences of improper execution of authorization, applies.

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[1] *Id.*
[2] *Id.* at art 183.3.
[3] *Id.* at art 183.2.
[4] Thus, such approval has a retroactive effect. See Abova, Boguslavsky, Kabalkin & Lisicin-Svetlanov (2007) p. 205.
[5] Russian Civil Code art. 158. For more on the subject, see Stepanov (2016). pp. 259–60.
[6] *Id.* at arts. 382–92; Suhanov (2007) p. 546.
[7] Russian Civil Code art. 183.1.

The purpose of Article 183, which allows the representee to accept a transaction concluded in his name, is to protect the representee. As to the third party with whom the transaction is concluded, Russian civil law usually presumes that he knew or should have known about the lack of the representative's authorization, since he had opportunities to check the power of attorney. So even where the representee does not approve an unauthorised transaction, it may be treated as concluded, but in the name and interests of the person who made it without competence. Therefore, if the third party has acted negligently or consciously, counting on the transaction being approved, the transaction is considered to be binding on him. Thus, if the representee approves the transaction and it consequently becomes binding, the third party who knew about the lack of authorization may not refuse the obligation he has undertaken by referring to the lack of authorization. However, the outcome is different when the third person did not or should not have known that the representative concluded the transaction, not on his own behalf, but for the representee, which may occur if the latter's name is left undisclosed. In such a case, the Civil Code rules regulating quasi-contract relations—more exactly, transactions in the interest of another person or *negotiorum gestio*—are applicable.[1] According to these rules, the rights and duties arising from such actions may pass to the person on behalf of whom the transaction was made, provided, however, that the third person does not object to it.[2]

Commission as Indirect Agency[3]

The general concept of commission (agency) contracts, the main purpose of which is to regulate brokerage activities in the performance of commercial transactions concerning legal services,[4] is provided directly in the Civil Code. According to the Code, under a contract of commission agency, one party or the commission agent is obligated, on delegation of the other party or the commission principal for compensation, to conduct one or more transactions in his own name, but at the expense of the principal.[5] The commission contract is a reciprocal, consensual contract that is compensated according to the Civil Code;[6] its only objects are commercial transactions.

Like delegation contracts, the relations regulated by a commission contract are internal and external. The internal relations concern the commission agent and principal, and are regulated by rules similar to those regulating delegation. In turn, the external relations are those between the commission agent and third party, with whom the commission agent concludes transactions to fulfil the task given by the principal. There are also modifications of commission

[1] *Id.* at art. 986.
[2] Sergeev (2009a) p. 538.
[3] For more on the subject see, in particular, Sergeev (2009b) pp. 708–21.
[4] Sergeev (2009b) p. 708.
[5] Russian Civil Code art. 990.
[6] *Id.* at art. 991.

contracts, which are the contracts concluded by an owner of the goods with the broker, dealer, and consignee.[1] The commission contract is based on the broad freedom of contract, and, in accordance with the Civil Code, the commission obligation can be defined for a determined time or be in force for an indefinite time;[2] it may also include (or not) conditions defining the area.

When a commission agent concludes a contract with a third person, the rights and duties arising from it belong to the commission agent irrespective of whether the principal is mentioned in the contract or not.[3] The commission agent transfers all received by him to the principal; however, the principal has the right of ownership to the things the commission agent received from or purchased for him.[4] The commission agent may also be obligated, by agreement to *del credere* liability;[5] otherwise, the commission agent is not liable for the performance of the third person, provided that he has exercised the necessary caution in choosing him.[6] As security for a claim (receivables), the commission agent has the right of retention to the things that are the object of the contract;[7] this right, however, ceases in case of the principal's bankruptcy. In instances where the representative is expected to do something in addition to legal actions (transactions) and real acts (actions), his activities are subject to the Civil Code rules regulating agency contracts, as presented above.

Conclusion

The revised rules of Russian law on representation and agency reflect modern regulation influenced by the convergence of continental and common law. At the very least, their content has become more comprehensive for common law lawyers.

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[1] Abova, Boguslavsky, Kabalkin & Lisicin-Svetlanov (2007) p. 748.
[2] Russian Civil Code art. 990.2.
[3] *Id.* at art. 990.
[4] *Id.* at art. 996.
[5] *Id.* at art. 991.1.
[6] *Id.* at art. 993.
[7] *Id.* at art. 996.

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