

RUSSIA

LEGAL DIGEST

AUGUST 2010

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ARBITRATION/LITIGATION

Law amends Arbitration Procedural Code, reduces length of proceedings.

On 27 July 2010, President Dmitry Medvedev signed the Federal Law No. 228-FZ “On Amending the Arbitration Procedure Code of the Russian Federation” (the “**Law**”), as adopted by the State Duma on 9 July 2010 and approved by the Federation Council (upper house of parliament) on 19 July 2010. The Law is intended to improve the procedure to resolve arbitration disputes.

The adopted amendments change the rules under which court assessors are involved in arbitration proceedings; thereby, reducing the possibility of parties intentionally protracting a case. Arbitration court assessors can now only be involved in the process of the first instance arbitration court upon petition of the parties when a case is extraordinarily complicated or when qualified specialists in economics, finance and/or administration are required. The petition to request arbitration court assessors has to explain the grounds for the extraordinary complexity of the case under review. In addition, even though the parties could previously indicate the surnames of individual assessors in their petition when forming the composition of the court, now it is established that a panel of jurors will be randomly selected by a computerised data system. The Law stipulates that in the event that it is necessary to form the composition of the court after objections have been filed against one or several of the assessors, or in the event that one or two of the assessors fails to appear at a court session, the case will be heard by the judge alone, exclusively.

The Law also alters the procedures for communicating information on arbitration proceedings once commenced. Following initiation of proceedings, once the court ruling on the initiation of the proceedings and proper notification have been received, the parties must now take steps

individually to receive information on the progress of the case. The arbitration court is required to post information on the court’s official website on the stages of the case proceedings, the time and location of the court session or the conclusion of separate legal proceedings not later than 15 days prior to the court session or the conclusion of the separate legal proceedings. In this case, those participating in the process risk unfavourable repercussions as a result of not enquiring on the time and location of a court case, if this information has been published on the arbitration court’s website.

The Law alters and, to an extent, simplifies the requirements for notifying parties generally. In accordance with the recent amendments, a party is considered to have been informed when the court produces evidence that a party has one way or another been informed of the initiation of legal proceedings. In this case, if the location or the place of residence of the respondent party is unknown, sending a notification to the last known location or place of residence is considered to be proper notification.

The ability for participants or interested parties in proceedings to file a complaint or petition, appeals petition, cassational appeal and/or supervisory appeal via the official website of the corresponding arbitration court and sending documents transferred in digital form via email to the arbitration court has been reinforced. The procedure to use videoconferencing during court sessions has been put in place and the requirement to record court sessions by audio is to be established. The Law stipulates that documentary evidence can be sent to the court via facsimile, electronic communication, and Internet documents signed using an electronic digital signature.

Among other issues, the Law also excludes the possibility of directly appealing the decision of a first instance court in a cassational instance court, and a court decision can now only be appealed in a cassational instance court

once the case has been reviewed in an appellate court.

The Law will come into force on 22 October 2010. Even though the amendments to the Arbitration Procedure Code limit the rights of the parties to involve arbitration court assessors and place the burden of responsibility of tracking the date for which a case has been set on the participants in the process, the amendments should assist in reducing the timeframes of legal proceedings as well as in reducing the workload of the arbitration courts.

[Federal Law No. 228-FZ “On Amending the Arbitration Procedure Code of the Russian Federation”]

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COMMERCIAL

Technical regulation

Customs Union Commission Renders Decision on Compliance Certification

The Customs Union Commission has approved the Standard List of Goods and Services subject to mandatory compliance as part of the Custom Union. Standard documents have also been issued.

Applicants may choose by 1 January 2012 for the issue of either (i) compliance certificates, (ii) statements of compliance with the standard forms, or (iii) statements of compliance with the legislation of the member states of the Customs Union for goods included in the List. These three alternatives are available for goods of foreign provenance also. The identification of goods and services included in the List is made in accordance with the legislation of the country of destination.

[Decision of the Customs Union Commission No. 319, dated 18 June 2010, "On technical regulation in the customs union"]

Healthcare

The Ministry of Public Health and Social Development Has Developed Rules for the Wholesale Trade of Medicines

The rules are mandatory for all organisations that trade medicines wholesale for medical use, but they do not apply to the following:

- to the representatives of producers who distribute samples of medicines for advertising purposes;
- the distribution of state standard samples of medicines;
- medicines relating to the circulation of blood and its components used for transfusions; and
- the sale of raw materials of animal and vegetable origin for further use in the preparation of medicines.

An organisation engaged in the wholesale trade of medicines is required to provide the necessary facilities, equipment and storage areas to preserve the quality and protect medicines during wholesale trade.

Furthermore, the legislation provides that an organisation engaged in the wholesale trade of medicines can sell or transfer medicines to:

- other organisations engaged in the wholesale trade of medicine;
- the producers of medicines in order to produce medicines;
- pharmacy organisations;
- research and development organisations in order to conduct research and development work;
- individual entrepreneurs who possess a license for pharmaceutical activities or a license for medical activities; and
- medical organisations.

The wholesale trade of medicines requires a license for pharmaceutical activities (with the marking "wholesale trade of medicines").

[Draft order, dated 13 August 2010, "On confirming the Rules for Wholesale Trade of Medicines for Medical Use"]

Insurance law

Terms and Conditions of Compliance with Antimonopoly Legislation for Agreements between Insurers Established

It has been established that insurers operating in the same market may not enter into agreements between themselves which: result in the setting or maintaining of fees for insurance for corresponding risks; allocate markets for insurance services between them based on territorial features, providers or users of services; determine the size (structure) of insurance fees or insurance premiums; establish terms and conditions requiring

participants of an agreement to require that insured parties sign other insurance contracts in addition to the one already signed; establish terms and conditions for refusal to contract with specific insurers or insured parties; or, in part, to set fines and penalties for participants exiting agreements. In addition, a procedure for exiting an agreement between insurers has to be determined by an agreement between insurers

Timeframes have also been established, during which agreements between insurers on joint insurance or reinsurance are permissible if the authorised aggregate of an insurance premium for relevant insurance contracts signed as part of an agreement is exceeded, and which start from the moment of excess. These timeframes depend on the amount of the excess, as well as novelty risks insured as part of an agreement.

[Decree of the Government of the Russian Federation No. 504, dated 5 July 2010, "On permitting agreements between insurers operating in the same Market, on offering joint insurance or reinsurance"]

Antimonopoly law

Procedure to Analyse a Goods and Services Market to Determine Compliance with Antimonopoly Legislation Specified

The antimonopoly agencies use a specific procedure to analyse the competitive situation in a market, whether there is a dominant position established in a market and to expose other circumstances limiting competition.

The procedure requires retrospective analysis, looks at goods and services that do not have a substitute or duplicate goods and services in the same market, determines the borders

of a territory in which parties obtain or could obtain goods and services but do not have this opportunity beyond the territory's borders, determines the composition of the participants in the relevant goods and services market, and calculates the size and volume of the goods and services market and the share of its participants in such market.

Based on those buyers identified by the analysis and using the coefficients established in the legislative procedure, the concentration level of the goods and services market and the presence of barriers to entry into the goods and services market are established, which, in turn, is the grounds for recognising a market with developed competition or with insufficiently developed competition, as well as the grounds to determine prospective amendments to the competition in the reviewed goods and services market.

In the event that there is a shortage of the enumerated features to determine what type of market is being reviewed, it is necessary to analyse the conduct of its participants. In particular, it is necessary to study the innovative activities and marketing strategy of the sellers, establish instances of sellers' offering separate purchasers preferred treatment, to identify agreements of the market participants, as well as to identify whether a buyer has sources of information on the goods at his/her disposal, assess the authenticity and relevancy of the available information, and assess the expenditure required to obtain this information.

[Order of the Federal Antimonopoly Service of the Russian Federation No. 220, dated 28 April 2010, "On confirming the Procedures to Analyse the Competitive Situation on the goods and services market". Registered in the Ministry of Justice of the Russian Federation, dated 2 August 2010, No. 18026]

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CORPORATE

Private Offering of Securities Placement Specified

The latest changes allow for the payment of additionally placed shares to setoff monetary claims against a joint-stock company (the “**JSC**”). However, this procedure is only permitted if the decision on increasing the charter capital of the JSC contains an instruction for this form of contribution.

Other amendments concern the emission of Russian depository receipts (the “**RDR**”), which can now be emitted via a public or private offering. In addition, the procedure and terms and conditions to emit RDR are specified.

Overall, the amendments are intended to regulate the issuance of additional shares, and they were registered in the Ministry of Justice of the Russian Federation on 11 August 2010, No. 18112.

[Order of the Federal Service for Financial Markets of the Russian Federation, No. 10-48/pz-n, dated 20 July 2010, “On amending the Standards to Emit Securities and the Registration of Securities Prospectuses, as confirmed by the Order of the FSFM of Russia No. 07-4/pz-n”, dated 25 January 2007]

Law in draft

Law on Mandatory Offer at an Open Joint-Stock Company Amended

The draft law amends the rules on conducting a public offering (the “**mandatory offer**”) by a party that has acquired more than 30% of the total number of common shares and preferred shares of a joint-stock company (“**JSC**”).

The general rule stipulates that the acquiring party, when it exceeds that acquisition threshold, has to make an offer to the other shareholders within 35 days of the moment that it has

found out or should have found out that it controls 30% of the shares (individually or jointly with its affiliated parties). However, the list of exceptions to the general rule has been expanded. If a JSC has acquired the shares as a result of state or municipal property being added as an investment in the charter capital, or if a state corporation has been transformed into an open joint-stock company, the mandatory offer can not be made.

This latest change allows for avoiding additional financial expenses, first and foremost, to the JSC when forming or increasing the charter capital by adding state or municipal property; and, secondly, for JSC that could be founded by the transformation of state corporations.

The draft federal law was approved in the first reading on 9 July 2010.

[Federal Draft Law No. 386522-5, dated on 9 July 2010, “On amending article 84.2 to the Federal Law ‘On joint-stock companies’”]

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REAL ESTATE

New rules for state cadastral valuation

A law amending the regulation of state cadastral valuation came into force on 26 July 2010. Hereinafter, cadastral valuation will be conducted in accordance with the Federal Law No. 135-FZ “On Valuation Activities in the Russian Federation”. The requirement to conduct the valuation at least once every five years has been retained. However, the former requirement that limited the frequency of valuation to once every three years has now been abolished. The lack of a minimum frequency threshold means that the frequency of the state cadastral valuation will be at the discretion of the state/local authorities.

A state cadastral valuation is conducted on immovable property objects registered with the State Immovable Property Cadastre. A federal cadastral valuation agency will prepare a list of immovable property subject to valuation. The approved results of the valuation will be published. Those legal entities whose rights and interests have been affected by the results of the cadastral valuation may appeal the results in court or in a commission for reviewing disputes on the results of the cadastral valuation, in accordance with the procedure stipulated by law.

[Federal Law No. 167-FZ “On Amendments to the Federal Law “On Valuation Activities in the Russian Federation” and to the Particular Legislative Acts of the Russian Federation” dated 22 July 2010]

Liability insurance made mandatory for owners of hazardous objects

On 27 July 2010, the Federal Law No. 225-FZ “On Mandatory Civil Liability Insurance for Owners Whose Hazardous Objects Cause Damage as the Result of an Accident” was adopted. The law stipulates that as at 1 January 2012, the

owners of hazardous objects are required to obtain, at their own expense, mandatory liability insurance to compensate for damage for the entire period of use of the hazardous objects.

A hazardous object is defined as one on which stationary lifting mechanisms, for example, lifts (elevators) and escalators, operate. The Government of the Russian Federation plans to stipulate the insurance rates and their structure and application processes, as well as relevant rules and regulations.

As at 1 January 2012, hazardous objects will not be permitted to be put into operation without the mandatory insurance. As at 1 April 2012, fines ranging from RUB 300,000—500,000 will be imposed on legal entities who use hazardous objects without the mandatory insurance policies being in place.

[Federal Law No. 225-FZ “On Mandatory Civil Liability Insurance for Owners Whose Hazardous Objects Cause Damage as the Result of an Accident” dated 27 July 2010]

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TAX

Taxation

Draft Federal Law on Amending VAT Payments

The Russian Ministry of Finance has published a draft law to amend part one of the Russian Tax Code (the “**Draft Law**”).

The Draft Law stipulates that in the event that there is a reduction in the price of a good sold, the purchaser can issue a VAT invoice to the seller, on the basis of which the seller can make a deduction to the VAT which the seller must account to the state budget for in respect of the good. The Draft Law establishes a detailed list of information which the VAT invoice must contain.

On the basis of the VAT invoice issued by the purchaser, the seller may deduct the difference between the VAT paid prior to the reduction in the price and the VAT paid after the price reduction.

The Draft Law also sets out new grounds for VAT recovery by purchasers in addition to the grounds already recognised under the law:

- the “removal or retirement of goods, including fixed assets, as a result of functional and/or physical depreciation during theft and shortage, as well as a result of natural disasters and/or other emergencies”;
- a “decrease in the price of goods, services and property rights”.

In such circumstances, the purchaser can recover the VAT it paid in respect of the good. The recovered VAT is not deductible for profit tax purposes.

[Draft Federal Law “On amending chapter 21 of part two of the Russian Tax Code”]

Recommendations on the Ministry of Finance regarding Shipping Documents Certified and Authenticated by Digital Signature

Under applicable accounting legislation, primary accounting documents may be prepared in hard copy or electronic form. Under the legislation on the use of electronic signatures, a valid electronic signature in an electronic document has the same legal effect as a manual signature on a hard copy document.

In a letter dated 28 July 2010, the Russian Ministry of Finance clarified that an electronic shipping document processed by means of an electronic signature constitutes a valid primary accounting document affirming the expenses incurred by the taxpayer.

[Letter of the Russian Ministry of Finance dated 28 July 2010 N 03-03-06/1/491]

Accounting

Federal Law on IAS Consolidated Financial Statements

On 27 July 2010, President Dmitry Medvedev signed the Federal Law “On consolidated financial statements” (the “**Federal Law**”).

The main purpose of the Federal Law is to improve the quality and transparency of financial statements filed by Russian companies, by requiring companies operating in certain industries / areas to file accounts based on IAS in the future.

Under the Federal Law, ‘consolidated financial statements’ refer to statements which provide information on the financial standing and results of Russian companies and groups of companies. Such groups may also include foreign entities.

Under the Federal Law, the entities which will, in future, be required to prepare and report consolidated financial statements based on IAS are insurance

organizations, publicly traded entities and stock market traders.

The Federal Law also requires that such entities continue to prepare separate financial statements in accordance with Russian Accounting Standards.

Annual consolidated financial statements are required to be published and audited. In addition, the statements must be reported to the authorized state agency, which the Russian Government shall appoint in the near future, and to the reporting company’s participants, as stipulated by the Federal Law.

The Federal Law requires the above companies to compile and publish consolidated financial statements in all years as from the year in which IAS becomes officially recognised as a reporting standard in the Russian Federation. The Federal Law stipulates that IAS shall become officially recognised by an order of the Russian Government, as agreed with the Russian Central Bank. At the present time, this order has not yet been adopted.

The Federal Law was enacted on 10 July 2010.

[Federal Law dated 27 July 2010 No. 208-FZ “On consolidated financial statements”]

Deadline to File Financial Statements Changed

On 27 July, 2010, the President of the Russian Federation signed a Federal Law on amending certain provisions of the accounting legislation (the “**Federal Law**”).

According to the amendments, joint-stock companies, banks and other credit organizations, as well as insurance companies, stock exchanges, investment companies and funds are required to file their respective annual financial statements prior to 1 July in the year following the reporting period.

Organizations were previously required to file their annual financial statements prior to 1 June. However, this law contradicted the civil legislation which permits the holding of an annual general shareholders meeting to approve the annual financial statements for 1 March to 30 June of the year following the reporting period.

The Federal Law was enacted on 10 August 2010.

[Order of the Russian Ministry of Finance dated 28 July 2010 No. 63H "On approval of accounting regulations "Correction of errors in accounting and reporting" (Russian Accounting Standards 22/2010)"]

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[Federal Law dated 27 July 2010 No. 209-FZ "On amending article 16 of the Federal Law "On accounting"]

Ministry of Finance adopts Rules on Correcting Accounting Errors

On 28 July 2010, the Russian Ministry of Finance approved the latest Accounting Regulations, which set out the rules concerning correction of errors in financial statements (the "**Regulations**"). The procedure established in the Regulations is legally binding for all Russian legal entities, excluding credit and budgetary institutions.

The Regulations stipulate that an accounting error is an incorrect reflection or non-reflection of facts of economic activity in accounting. A mistake may arise from incorrect classification or assessment of the facts, inaccuracies in calculations as well as from unlawful acts of officials.

In the event that an error is revealed before the end of the reporting period, it should be corrected in the accounting records as of the month of its discovery. In the event that the error is discovered after the end of the reporting period, but before the moment of signing the financial statements for that reporting period, the error is to be corrected in the accounting records as of December of that reporting period.

The Regulations also set out a special procedure to correct "substantial" errors, i.e. ones that may affect economic decisions taken on the basis of the financial statements by such users.

The Regulations shall apply to accounts for periods starting from 2010.

