

RUSSIA

LEGAL DIGEST

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ARBITRATION/LITIGATION

The Supreme Arbitration Court of Russia has considered a case regarding the enforcement of security following a decision of the international arbitration tribunal.

The Presidium of the Supreme Arbitration Court (SAC) examined an application filed by Edimax Limited (Cyprus) (hereinafter "Plaintiff") in connection with the enforcement of security against the property of S.P. Chigirinskiy (hereinafter "Defendant"). The Plaintiff claimed that it should be allowed to arrest the Defendant's apartment as security for an outstanding sum of USD 32 million owed by Diviteo Limited (hereinafter "Defendant Company"), which has direct relevance to the Defendant. The suit was filed in the London Court of International Arbitration on 7 April 2009, focusing on the fact that the Defendant Company Diviteo Limited had not repaid the loans issued by the Plaintiff, which were personally guaranteed by the Defendant.

The SAC session was preceded by hearings in the Moscow Arbitration Court, Court of Appeal and Cassation Instance. The trial court refused to arrest the Defendant's property as security, as it considered the Plaintiff's claims to be unfounded; however, the Court of Appeal ruled in favour of the Plaintiff. Nevertheless, the Court of Cassation overturned this decision, deciding to discontinue the proceedings. The case was subsequently referred to the SAC, as the tribunal has jurisdiction to consider a case involving the application of security measures, following international arbitration. The Defendant also acted in the interests of his company when he issued the loan guarantees.

However, the Presidium of SAC decided to cease proceedings because of the following reasons:

- under Russian legislation, security measures can be applied by an arbitration tribunal, upon the application of one of the parties to the proceedings;

- the security measures have to be applied according to the general rules provided for by the Arbitration Procedure Code of the Russian Federation, taking into account the features of the form of the dispute in international arbitration, and being based on the agreement between the parties (the arbitration agreement).

The Arbitration Court has jurisdiction to try cases related to economic disputes and other matters involving business and other economic activities;

- to refer a case to the arbitration courts it is essential that there are proper (business-related) parties and that the subject of the dispute and the claims are of an economic nature;

- when considering the documents presented by the Plaintiff, the SAC indicated that the guarantee for the loans of Defendant Company was granted to the Plaintiff as a guarantee from an individual person for the purpose of securing the performance of payment obligations from a company.

Therefore, the claim brought against the Defendant to the international arbitration is related to the person, who is not a businessman and not engaged in other economic activities, and, therefore, this dispute is not subject to arbitration proceedings in arbitration courts of Russia.

The SAC could not find a reason to try this case in the arbitration court, because the facts do not indicate that the guarantee issued by the Defendant, or its obligation there under, are related to the rights and responsibilities of the business entity.

The current legislation does not provide for this dispute to be considered by the arbitration court because of the participation of a natural person. This dispute falls within the confines of the court of general jurisdiction. Furthermore,

the purpose for which the individual has given the guarantee is immaterial and does not permit the arbitration court to hear the matter squarely due to the nature of the legal relations.

Consequently, the challenge to the court's decision is subject to reversal, because the Plaintiff's application to secure the claim, as filed with the London Court of International Arbitration, is beyond the jurisdiction of the arbitration court of Russia.

According to the New York Convention of 1958, international arbitration decisions must be enforced by the courts of Russia. However, there are no provisions explicitly mandating the courts of the countries participating in this Convention to apply security measures adjudged by a foreign arbitration tribunal.

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COMMERCIAL

Employment

On 1 July 2010, Russia ratified the International Labour Organisation (“ILO”) Convention № 132 (1970) on paid leave

The ratification impacts the treatment of the “extended portion” of annual paid leave (being that portion of continuous paid leave equal to two weeks). Currently, the extended portion must be used during the course of the year, while the remaining unused portion of paid annual vacation may be used within eighteen months of the end of the year in which the paid leave is granted.

The Convention clearly states that extended paid leave will cease to be transferable and cumulative for the previous periods and will be paid as compensation as unused vacation time upon resignation or dismissal; however, current Russian law permits employees to divide their paid leave into smaller parts during the current year and transfer the unused days to the following year. Furthermore, the ILO Charter itself states that the ratification of any convention by any country will not be construed as affecting any law which provides the employees concerned with more favourable conditions than those provided by the convention.

Consequently, it is recommended to comply with the current Russian law related to the transfer and accumulation of paid vacation time for the previous periods until such time as legislation is introduced and adopted to amend the current labour laws.

[International Labour Organisation (ILO) Convention № 132 (1970) on paid leave]

Healthcare

A list of strategic medicines to be produced in Russia has been approved by the Government of Russia

The list, which includes 57 types of medicine, was compiled to keep

medication curing the most common diseases affordable. The list includes: “Abakavir”, “Alteplaza”, inactivated vaccine against poliomyelitis, “Darunavir”, “Melfalan”, “Nimodipin”, “Propofol”, “Sotalol”, “Takrolimus”, “Tobramitsin”, “Fenspirid”, “Formoterol”, “Enfuvirtid”. [Russian Government Directive № 1141-r, dated 6 July 2010]

The Russian Ministry of Healthcare and Social Development (*Minzdrav*) has developed regulations for compulsory life and health insurance for those participating in clinical drug tests

The Russian Government has adopted the decree “On approving the standard rules for compulsory life and health insurance for patients participating in clinical drug tests”.

The decree establishes the procedure for exercising the rights and obligations of the parties of a contract for the compulsory life and health insurance of patients involved in clinical drug tests for medical use, in the event that they are injured or killed as a result of said tests. The decree also regulates the contractual relationship of compulsory insurance.

In accordance with Russian legislation, an insurance company is required to enter into a contract of compulsory insurance with each patient participating in a clinical test.

The Law establishes that the beneficiaries under the contract of compulsory insurance are:

- In the event of death – citizens as per civil law; and, in the absence of such citizens – the parents, spouse, children of the deceased;
- If a patient has been injured – the patient whose health has been harmed.

The regulations take effect on 1 September 2010.

[Russian Government Decree “On approving the standard rules for

compulsory life insurance, health insurance for patients participating in clinical drug tests”, dated 23 July 2010]

The Courts

New law related to the transparency of justice has entered into force in the Russian Federation as at 1 July 2010

The defined law was adopted in conjunction with other anti-corruption laws.

The purpose of this law is to ensure open access to information on the activity of the courts and acts adopted by the courts.

This law purports to improve Russian legislation by ensuring the rights of citizens and organisations to attend open court hearings; requiring courts to publish information in the mass-media on their activities and on their own websites; and placing information on their work on the premises of the courts, judicial departments, bodies of the judicial community (at information stands, etc.). The Law also provides for the possibility to familiarise citizens and organisations with information on the activities of courts in archival funds by allowing full access to this information.

[Federal Law № 262-FZ “On Permitting Access to Information on the Activities in the Russian Federation Courts”, dated 22 December 2008]

Amendments to certain federal laws clarifying the procedure for posting judicial acts on the Internet have taken effect as at 1 July 2010

In addition to the personal data of judges, public prosecutors, litigation counsel and representatives involved in court proceedings, whose surnames and initials are specified in posted judicial acts; judicial acts posted on the Internet are now required to contain

the personal data of a claimant, a respondent, a third party, a civil claimant and a civil respondent, a convicted person, an acquitted person, against whom administrative proceedings are conducted, as well as the judicial clerk. Consequently, the transparency of the judicial procedure in Russia is improved.

According to the amendments to the laws, the Federal Law "On Personal Data" does not apply (otherwise this would prevent disclosure) to any relations arising where authorised bodies provide information on the activities of courts in Russia in accordance with Federal Law № 262-FZ, dated 22 December 2008, "On Permitting Access to Information on the Activities of Courts in the Russian Federation".

Judicial acts in the form of court orders are not to be posted on the Internet.

[Federal Law № 123-FZ "On Amending Article 1 of the Federal Law "On Personal Data" and Article 15 of the Federal Law "On Permitting Access to Information on the Activities of Courts in the Russian Federation", dated 28 June 2010]

Insurance

Ministry of Finance plans to approve new requirements on placement of insurer's own funds from 30 June 2011

The Ministry of Finance has announced that currently it is considering the cancellation of Order № 149N, which sets the requirements for the composition and structure of assets to cover an insurer's own funds, and the adoption of new requirements set to come into effect as from 30 June 2011.

The current situation is as follows: The main change is to the indicator defining an insurer's own funds, which is currently the larger of the two indicators: the minimum amount of charter capital and the rated amount of the solvency margin. The draft of the Order introduces a coefficient which varies depending on the type of coverage underwritten, along with the minimum amount of the charter capital and the rated amount of the solvency margin. This figure is 1.6% on liability insurance for air, water, railroad and dangerous objects, and 1.3% for other insurers.

In addition, the draft of the Order sets stricter requirements on promissory notes that are allowed to cover an insurer's own funds. Such promissory notes are required to be purchased as per a sale and purchase agreement (SPA) and have to be paid accordingly. Insurers have to adhere to the following criteria to be permitted to use bills of exchange and promissory notes to cover their own funds: securities are to be included in the Bank of Russia Lombard List; or the issuer is required to have a rating of at least BB- (S&P), Ba3 (Moody's) and BB- (Fitch); or the issuer is required to be rated by one of the Russian agencies accredited, and included into the register of the accredited rating agencies, by the Ministry of Finance.

In addition to the abovementioned, it has been suggested to amend the asset list in which own funds can be placed above the solvency margin and to reorganise the structure correlation.

Law Enforcement

The Russian Criminal Code has been amended to increase the effectiveness of combating property seizures, to improve economic and non-property rights and to protect enterprise funds

The amendments stipulate criminal penalties for falsifying a unified state register of legal entities; for falsifying the register of securities holders or a depository accounting system; and for falsifying the decisions of the shareholders (participants) of a business entity or decision of the board of directors (supervisory council) of a business entity by introducing false information into the Unified State Register. These offenses are punishable by fines, deprivation of the right to hold certain positions or engage in certain activities and/or incarceration of up to ten years.

[Federal Law № 147-FZ "On Amending the Criminal Code of the Russian Federation and Article 151 of the Criminal Procedure Code of the Russian Federation", dated 1 July 2010]

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CORPORATE

Draft laws

Corporate raiders could face possible criminal charges

A Federal Law introducing criminal liability for methods commonly used by corporate raiders came into force on 5 July. These methods typically involve:

- falsifying the Unified State Register of Legal Entities and/or a register of securities holders and/or a depositary accounting system;
- falsifying the resolution of a business company's general shareholders meeting (participants) and/or the resolution of a business company's board of directors (supervisory board);
- knowingly introducing false information into unified state registers.

Investigators from the Investigative Committee of the Russian Public Prosecutor's Office are assigned to conduct a preliminary enquiry into these crimes, which could be punishable by a fine of up to RUR 500,000 and/or 10 years incarceration.

[Federal Law № 147-FZ, dated 1 July 2010, "On Amending the Russian Criminal Code and Article 151 of the Russian Criminal Procedure Code"]

Government approves rules to prepare plans for scheduled inspections of legal entities and self-employed entrepreneurs

In order to develop Article 9 of the Federal Law "On Protecting the Rights of Legal Entities and Self-employed Entrepreneurs During State and Municipal Inspections (Monitoring)", the Russian Government on 30 June approved the rules for preparing the annual plans of scheduled inspections.

The local offices of the federal executive authorities, regional executive authorities and local authorities responsible for state and municipal inspections (monitoring)

develop the plans in accordance with the approved form.

Once approved by the relevant authorities, in terms of prospective joint inspections, an annual draft plan has to be referred to the public prosecutor's office at the location of those scheduled for inspection by 1 September of the year preceding the scheduled inspections. Thereafter, the annual draft plan is revised and approved by a relevant authority's director, taking into account the comments of the public prosecutor's office.

Annual plans prepared by the executive authorities' local offices are to be included in the annual plan prepared by a federal executive authority.

Annual plans are posted on the relevant websites. It should be noted that the legal entities and self-employed entrepreneurs included in the plan are selected based on an assessment of the results of unscheduled inspections over the past three years, an analysis of compliance with the mandatory requirements of Russian federal and regional laws and/or the requirements imposed by municipal legal acts, as well as an assessment of the potential risk of causing damage related to the activities pursued by the respective legal entities and self-employed entrepreneurs.

[Russian Government Resolution № 489-FZ "On Approving the Rules to Prepare the Annual Plans of Scheduled Inspections of Legal Entities and Self-employed Entrepreneurs by State Control (Monitoring) and Municipal Control Authorities", dated 30 June 2010]

Regulation of auditing activities amended

On 1 July, several amendments to the Federal Law "On Auditing Activities" came into force. Among other things, companies in which the state owns at least 25%, as well as state corporations and state companies have been included in the list of entities whose accounts (financial statements) are subject to

mandatory audit exclusively by audit organisations.

In terms of auditing activities, a Provision has been added to the Federal Law, stipulating that the council for auditing activities has to approve the rules and regulations for the independence of the auditors and the auditing organisations by 1 October 2010. In turn, the self-regulated auditor organisations are required to approve these rules and regulations by 31 December 2010, retaining the right to add other requirements in addition to those envisaged by law.

Other amendments pertaining to the procedures and grounds for issuing qualification certificates to auditors will take effect only on 1 January 2011.

[Federal Law № 136-FZ "On Amending the Federal Law 'On Auditing Activities'", dated 1 July 2010]

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TAX

Draft law “On the “Skolkovo” innovation center”

On 31 May the President of Russia introduced the draft law “On the “Skolkovo” innovation center” as well as the draft law on the introduction of amendments to certain legislative acts (hereinafter, the “Draft laws”) to the Russian State Duma.

The Draft laws provide for the creation of a territorially separate association of enterprises in the sphere of research, development and the commercialization of results of such researches. The creation and functioning of this association shall be subject to a special legislative regime.

Legal entities created under Russian legislation that have the aim of carrying out research activities in the territory of the innovation center shall be able to become participants of “Skolkovo” by acquiring the status of a participant of the project under the procedure set forth by law.

According to the Draft laws the participants of “Skolkovo” are entitled to the following tax and customs benefits, as well as exclusions from the rules of accounting:

- budgetary reimbursement of customs duties and VAT payable upon the importation of goods;
- exclusion from the obligation to adhere to the rules of accounting unless the annual income of the participant exceeds RUR 1 billion;
- exemption from VAT payment;
- income received as a result of research, development and commercialization is taxable at a 0% rate for 10 years from the moment the entity was registered as a participant of the “Skolkovo” project;
- exemption from the payment of state duty for the issuing of work permits,

invitations and visas in relation to foreign employees; and

- exemption from property tax and land tax.

An organization loses the right to benefit from these benefits upon the loss of the status of a participant of the project

The Draft laws were adopted in the first reading by the Russian State Duma and are currently being amended by the Committee of economic policy and business of the Russian State Duma.

[Draft Federal law № 383610-5 “On the “Skolkovo” innovation center”, Draft Federal law “On amending certain legislative acts of the Russian Federation in connection with the adoption of the Federal law “On the “Skolkovo” innovation center”]

Federal law amending part one and part two of the Tax Code of the Russian Federation

On 16 July 2010 the State Duma of the Russian Federation adopted a Federal law introducing important amendments to part one and part two of the Tax Code of the Russian Federation (hereinafter, the “Tax Code”).

The Federal law provides for the following key amendments:

- introduction of a new procedure and conditions for obtaining a tax credit, deferment or investment tax credit: e.g. a tax credit or deferment may be granted to an organization up to the amount not exceeding the amount of its net assets;
- the procedure for the acceptance of bad tax debts on penalties and fines is improved: e.g. precise grounds for the acceptance of bad tax debts on penalties and fines are introduced;
- extension of use of electronic documentation in correspondence between taxpayers and tax authorities: e.g. applications for

registration with the tax authorities may be filed in electronic form with the use of the communications channel;

- invoices may be issued in electronic form signed by the director of the organisation with the use of an electronic signature; and
- increased penalties for tax offences: the fine for the violation of an order of registration is increased – from RUR 2,000 to RUR 10,000 and the minimal fine for the failure to file a tax return is increased from RUR 100 to RUR 1000.

On 19 July 2010 the Federal law was adopted by the Federation Council and sent to the President of Russia for signing.

Please find more information relating to this Federal law in the Tax Outlook for July 2010.

[Draft Federal law № 269777-5 “On amending part one and part two of the Tax code of the Russian Federation and certain legislative acts of the Russian Federation and on the invalidity of certain legislative acts of the Russian Federation in relation to the regulation of tax debts and other issues of tax administration”]

VAT exemption for real estate developers

On 17 June 2010 the President of Russia signed the Federal law amending the procedure of state registration of real estate rights and transactions, and certain legislative acts of the Russian Federation (hereinafter, the “Federal law”).

The Federal law introduces a VAT exemption for the services performed by a developer under a share construction contract.

Please note that according to the legislation on share construction a developer is considered to be a person who attracts the funds of persons who will enter into a share construction contract

for the construction of a property development on a land plot.

The provision of the Federal law relating to the VAT exemption for developers enters into force on 1 October 2010.

[Federal law dated 17 June 2010 № 119-FZ “On amending the Federal law “On state registration of rights to real estate and real estate transactions” and certain legislative acts of the Russian Federation”]

New regulation of the Customs Union

On 18 July 2010 the Commission of the Customs Union (hereinafter, the “CCU”) passed several resolutions in relation to the creation and functioning of the Customs Union between Russia, Belarus and Kazakhstan (hereinafter, the “Customs Union”). The importation of goods to the customs territory of the Customs Union shall be subject to the following resolutions.

The resolution on the technical regulation of the Customs Union establishes the order of importation of goods included in the unified list of goods subject to obligatory certification. The resolution also specifies the forms of certificates and declarations of conformity for such goods and implements a unified procedure of registration for these certificates, declarations and competent certifying institutions.

The resolution on the application of veterinary and sanitary measures in the Customs Union establishes a unified list of goods subject to veterinary control and in addition implements veterinary requirements for such goods. The resolution also unifies the procedure of veterinary control and adopts single form of veterinary certificates.

The resolution on the quarantine of plants provides for a procedure of quarantine control in the territory of the Customs Union and on the border of Customs Union and adopts a list of goods subject to such quarantine control.

The resolution on the application of single sanitary measures in the Customs Union adopts a unified list of goods subject to sanitary and epidemiological control, provides for the specific requirements for

such goods and establishes unified forms of documents proving the safety of these goods.

[Resolution of the CCU dated 18 June 2010 № 317, № 318, № 319, Resolution of the CCU dated 28 May 2010 № 299]

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