
LAW FIRM

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NEWSLETTER

REVIEW OF THE NOTABLE CHANGES IN LEGISLATION

No. 2/2010
February 2010

Arbitration Procedure – Court Practice

On January 21, 2010, the RF Constitutional Court issued Ruling No. 1-P in the Case on the Examination as to Constitutionality of Article 170(4), Article 311(1) and Article 312(1) of the RF Code of Arbitration Procedure in Connection with the Appeals of Bereg Production Association CJSC, Karbolit OJSC, Mikroprovod Plant OJSC and Respirator Scientific-Production Enterprise OJSC. In the Ruling the Constitutional Court states its views on certain issues relating to reopening of closed cases upon discovery of new circumstances.

According to the Constitutional Court, reopening of the case upon discovery of new circumstances is possible, *inter alia*, where the judgment in that case had been based on the law provisions the application of which was determined (or changed) by the corresponding Ruling of the Plenum of the RF Supreme Arbitration Court or of the Presidium of the RF Supreme Arbitration Court after the effective date of the judgment. Such possibility is constitutional, and the ground for it is the enhancement of efficiency of the judgments review institution and the giving of a better chance to the persons involved in the case to have their rights defended. This, however, does not make the rulings of the Supreme Arbitration Court retroactive without regard to the nature of a disputed relationship. Reopening of the case upon discovery of new circumstances is subject to an express direction in the corresponding Ruling of the Plenum of the Supreme Arbitration Court or of the Presidium of the Supreme Arbitration Court that the law rules construction contained therein may have a retroactive force. Ruling No. 1-P of the Constitutional Court specifies criteria for giving a retroactive force to the interpretation of law by the Supreme Arbitration Court.

If the panel of judges of the Supreme Arbitration Court dismisses a plea for referral of the case to the Presidium of the Supreme Arbitration Court for a review and indicates in its decision that the case may be reopened upon discovery of new circumstances, this does not mean that reopening is mandatory.

The Constitutional Court also indicates that a case may be reopened upon discovery of new circumstances where the effective judgment in the case relied on the law provisions which the Constitutional Court subsequently found inconsistent with the Constitution. The case may only be reopened due to the unconstitutionality of law provisions after the interested parties have properly expressed their will and the branch laws and regulations have been taken into consideration.

Civil Law. Intellectual Property. Trademarks

Under Federal Law on Amendment of Article 1501 of Part IV of the RF Civil Code, dated February 24, 2010, No. 17-FZ, the terms set by the Civil Code for procedures connected with the examination of a trademark application and missed by the applicant or the right holder may be reinstated upon a request filed within six months after the expiration of the terms (previously, the grace period was two months).

Federal Law on Recognition as Void of Article 1490(2) of Part IV of the RF Civil Code, dated February 21, 2010, No. 13-FZ, removes the collision with Article 1232(2) of the Civil Code and makes void Article 1490(2) which states that the procedure for state registration of contracts for the disposition of the exclusive right to a trademark is established by the federal executive authority carrying out legal regulation in the field of intellectual property.

Banking

According to Federal Law on Amendment of Article 29 of the Federal Law on Banks and Banking, dated February 15, 2010, No. 11-FZ, the rates of interest on loans and (or) the manner of determination of the rates, as well as the rates of interest on deposits and the amount of bank commission are established on agreement of the parties, unless the federal laws stipulates otherwise.

Under the general rule, a credit organization may not at its discretion change the rates of interest on loans and (or) the manner of their determination, the rates of interest on deposits, the bank commission and the terms of validity of contracts with individual entrepreneurs and legal entities. With respect to the contract with an individual borrower, the credit organization may not at its discretion reduce the term of validity of the contract, increase the rate of interest and (or) the manner of its determination, increase or set the amount of bank commission on operations, except for cases stipulated by the federal law.

The said rules apply to relationships under contracts executed after the effective date of the said rules.

The Federal Law will come into force as of March 20, 2010.

Cadastral Record Keeping

On December 28, 2009, the RF Ministry of Economic Development issued Order on the Procedure for Filing with the Cadastral Register for the Purpose of Recordation of Real Estate Property of an Application and Requisite Documents in an Electronic Form Through Public Communication Networks, Confirmation of Receipt by the Cadastral Register of the Application and the Documents, and Certification of the Authenticity of the Electronic Image of the Document Necessary for Recording the Real Estate Property in the Cadastral Register, No. 555.

The application and other requisite documents filed with the cadastral register in an electronic form should bear digital signatures. The technical requirements are placed on the official Internet site of the cadastral register (www.rosreestr.ru). The Order specifies persons whose digital signature should appear on the electronic documents. The application and other requisite documents may be filed through the Single Portal of State and Municipal Services (Functions) or through the above-mentioned official Internet site or by e-mail or with the use of web-services. The Order indicates information transfer protocols for filing of documents.

The contents of an application filed as an electronic document should correspond to the form approved by Order of the RF Ministry of Justice, dated February 20, 2008, No. 34. Electronic documents should be made out as XML files. The corresponding schemes are placed on the cadastral register's official Internet site mentioned above.

The cadastral register confirms receipt of the documents by sending back an electronic receipt bearing the digital signature of the authorized person. At the applicant's choice, the receipt may be sent by e-mail or with the use of the web-service. The electronic receipt is issued to the

applicant on the day of filing of the application.

The Order came into force on March 1, 2010.

Customs Law. Foreign Trade Commodities Nomenclature

The Federal Customs Service by its Order on Classification of Certain Goods in Accordance with the Customs Union Foreign Trade Commodities Nomenclature, dated December 22, 2009, No. 229-r, approved the Collection of Decisions and Clarifications regarding the said classification.

Registration with Tax Authorities

Order of the RF Ministry of Finance on Approval of the Procedure for Registration and Cancellation of Registration with Local Tax Authorities of Detached Subdivisions of Russian Organizations, Real Estate and (or) Transportation Vehicles Thereof, Russian Citizens, and Individual Entrepreneurs Holders of Patents Using a Simplified Taxation System, No. 114n, was issued on November 5, 2009.

With respect to Russian organizations it is established that an application for tax registration is filed with local tax authorities within one month following the setting up of an independent subdivision. The Order specifies documents that should be enclosed with the application. An organization that is not registered with the local tax inspectorate having jurisdiction over its branch (representative office) on none of the grounds stipulated by the RF Tax Code may file an application for tax registration as per form No. P11001 (No. P12001, No. P13001) or a notification as per form No. P13002 containing information on the branch (representative office). In all other cases the organization is registered with local tax authorities having jurisdiction over its detached subdivisions (including those located in one municipality) by giving notifications to the corresponding local tax inspectorates.

If several detached subdivisions of the organization are located in one municipality but fall under the jurisdiction of different tax inspectorates, the organization may choose any of those local tax inspectorates for getting registration.

The local tax inspectorate should register the organization within five working days upon receipt of its application or notification.

Refinancing Rate

According to the information published by the Central Bank of Russia on February 19, 2010, the rate of refinancing has been established at 8.5% per annum effective February 24, 2010. The previous rate 8.75% was effective as of December 28, 2009. Interest rates for operations of the Bank of Russia have been revised accordingly.

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This newsletter is not intended to provide legal advice and/or any other form of legal assistance that may be rendered by attorney-at-law to client. The exclusive purpose of this review is to make aware its recipient of certain recent changes in Russian laws and regulations, and of the development of law application practice. Any use of the information contained herein for particular purposes may require more detailed case-specific explanations. Further information can be obtained via +7 (495) 933 75 67 or office@agp.ru

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