LAW FIRM

ANDREY GORODISSKY & PARTNERS

NEWSLETTER

REVIEW OF THE NOTABLE CHANGES IN LEGISLATION

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Customs Code of the Customs Union

Pursuant to Federal Law on Ratification of the Treaty on the Customs Code of the Customs Union, dated June 2, 2010, No. 114-FZ, Russia ratifies the Treaty on the Customs Code of the Customs Union, signed in Minsk on November 27, 2009 (the "Treaty"), whereby the parties (Republic of Belarus, Republic of Kazakhstan and Russian Federation) adopted the Customs Code of the Customs Union (the "Code") being an integral part of the Treaty.

According to the Treaty on Formation of the Single Customs Territory and Formation of the Customs Union, dated October 6, 2007 (came into force on October 10, 2008), the Customs Union ("CU") is a form of the parties' trade and economic integration with a single customs territory. Within that territory, goods originating from the single customs territory as well as goods originating from third countries and cleared in the single customs territory are traded by the parties free of customs duties and any limitations of economic nature, except for certain special protective, anti-dumping and compensatory measures. The single customs tariff and other uniform regulatory measures are applied to the trade with third countries.

The Treaty was entered into for ensuring customs regulation in the CU single customs territory consisting of the customs territories of the parties to the Treaty. According to the Code, customs laws and regulations applicable in the CU customs territory include the Code, the CU member countries' international treaties governing customs relationships in the CU, and decisions of the CU Commission regulating customs relationships in the CU. The CU Commission is a single permanent regulating body of the Customs Union.

The Code sets forth fundamental principles of the movement of goods in and through the CU territory, rules for determination of goods' origin and customs value, manner of application of various procedures; uniform conditions of transit in the entire CU territory, types of customs procedure, including clearance for internal consumption, exportation, customs warehouse, re-importation, re-exportation, temporary importation, temporary exportation; customs payments and deadlines depending on the procedures applied; procedures for filling in, submission and specification of a customs declaration; specifics of movement across the border of certain categories of goods and customs operations with them.

The Code contains a number of transitory provisions stipulating, *inter alia*, that the Code applies to the relationships that are governed by the CU customs laws and regulations and that

arose as of the effective date of the Code. If the international treaties of the CU member countries and the decisions of the CU Commission have not come into force as of the effective date of the Code, then the relevant laws and regulations of the CU member countries will apply until such treaties and decisions come into force. There are separate transitory provisions on the activity of customs agents, customs brokers, customs carriers; transitory provisions on the specifics of customs operations, specifics of transportation of goods under customs control, on the status of goods and customs procedures, etc.

The Treaty and the Customs Code as its integral part came into force on July 1, 2010.

Privatization

Federal Law on Amendment of the Federal Law on Privatization of State and Municipal Assets, No. 106-FZ, came into force on May 31, 2010. According to it, the Privatization Law does not apply to the sale of federal assets sanctioned by the RF Government for the purpose of attracting investors, stimulating the development of the stock exchange market, modernization and technological development of economy. The sale of such assets is regulated by other federal laws.

For implementing the state policy in the sphere of privatization, the RF Government may cause legal entities to organize the sale of federal assets being privatized and (or) act as a seller on behalf of the Russian Federation. The appropriate governmental decision will specify which federal assets are subject to privatization, actions of the said legal entities, the amount of a remuneration for their services and the manner of its payment. The list of such legal entities is subject to approval by the RF Government.

The term of a privatization forecast plan may now be from 1 to 3 years. The plan should be prepared with regard for the corresponding governmental decisions.

State-owned shares in open joint stock companies (OJSCs) created as the result of reorganization of federal state unitary enterprises may now be contributed to the charter capital of OJSCs without a revision of the privatization forecast plan. However, the disposal of such federal assets should be pre-approved by presidential and governmental decisions.

Instead of the normative price of the assets, the owner establishes a starting price which is determined on the basis of a report on the assets appraisal. Tenders may be held in an electronic form in accordance with the procedure determined by the RF Government.

The new Law has introduced provisions concerning improvement of the dissemination of information about privatization. Besides, if a tender has been recognized as failed, the assets may be sold through a public offering.

Personal Data and Russian Courts Practice

Federal Law on Amendment of Article 1 of the Federal Law on Personal Data and Article 15 of the Federal Law on Access to the Information on Russian Courts Practice, No. 123-FZ, was adopted on June 28, 2010.

According to the new Law, the Personal Data Law does not extend to the disclosure by competent authorities of information on Russian courts practice. This area is regulated by the Law on Access to the Information on Russian Courts Practice.

For the purpose of ensuring safety of persons participating in court proceedings, all personal data (except for the surname and initials of the plaintiff, defendant, third party, civil plaintiff, civil defendant, convict, acquitted, defendant in administrative proceedings, court reporter, judge(s), prosecutor, attorney and representative) are to be excluded from judicial acts published in Internet. Instead of the excluded personal data, initials, pseudonyms or other symbols making it impossible to identify persons participating in court proceedings are to be used. The text of court orders is not allowed to be published in Internet.

The new Law came into force on July 1, 2010.

A Review of the RF Supreme Court – Court Practice

A Review of Legislation and Court Practice of the RF Supreme Court for the first quarter of 2010 (approved by the Presidium of the RF Supreme Court, dated July 16, 2010) contains brief conclusions on certain issues of law application illustrated by court cases; describes the approach of common courts to the construction and application of law in different disputes, including disputes arising from civil, employment, social, and administrative relationships.

Described is the approach of courts to surety agreements securing obligations under loan agreements. In the event of improper performance by the borrower of the obligations under a loan agreement, the time bar for the creditor's claims to the surety for repayment of the loan which should be repaid in installments under the loan agreement is calculated from the due date of the next installment in turn. The surety agreement provision that the surety is aware of all terms and conditions of the loan agreement, including its term, is not the provision on the term of the surety agreement.

As to employment disputes, the Supreme Court indicates that the law does not obligate the employer to calculate the employee's annual bonus in accordance with the rules set for the calculation of an average salary. The calculation of an annual bonus is not equivalent to the calculation of an average salary. Insofar as the law is silent regarding the manner of calculation of an annual bonus, the parties to an employment agreement may regulate this matter themselves. The notion "average salary" is not identical to the notion "annual bonus", therefore the manner of calculation of an average salary set in Article 139 of the RF Labor Code is not obligatory for the calculation of an annual bonus. Thus, the employer may, on agreement with the employees' representative body, determine in a collective employment agreement the employer's own mechanism of calculation of additional incentives.

In a civil process, the prosecutor may apply to a court for liquidation of the legal entity set up with violation of applicable laws as a measure protecting the interests of the Russian Federation. It is not required to identify the state authority on whose behalf the prosecutor, invoking Article 45 of the Code of Civil Procedure, requests the court to protect the interests of the Russian Federation.

The Review clarifies certain matters arising in court practice. For example, regarding the amount of fee for filing a claim for recovery of interest on the use of another's money (Article 395 of the Civil Code), the Review gives the following explanation. Such claim is of a pecuniary nature and is always subject to appraisal. Therefore, the statement of claim should indicate a price calculated on the basis of the amount of interest that accrued by the time of the filing. Consequently, the fee for filing the claim for recovery of interest on the use of another's money should be calculated on the basis of the amount of interest accrued by the time of filing and may be changed when the court issues its decision.

It is also explained that consideration of an appeal from the state labor inspector's decision to hold the employer liable for violation of labor law (Article 5.27(1) of the Code of Administrative Wrongdoings) is in the competence of a common court, not a state commercial court.

Mass Media – Court Practice

Ruling of the Plenum of the RF Supreme Court on the Practice of Application by Courts of the RF Law on Mass Media, No. 16, was adopted on June 15, 2010.

The Ruling deals with a broad range of issues connected with the activity of mass media, including liability of mass media, registration of mass media, and dissemination of information in Internet.

Persons who violated the law when disseminating information through Internet sites that

are not registered as mass media bear criminal, administrative, civil and other liability in accordance with Russian laws without regard for the specifics stipulated by mass media laws. When deciding whether the illegal dissemination of information in Internet took place, a court may accept any evidence stipulated by the laws of civil procedure.

If the dispute concerns the making of a mass media product, the proper defendant is the publishing house. If the claim is made with respect to the dissemination of a mass media product, the proper defendant is the disseminator of such information. In cases concerning the contents of the disseminated information, neither the publishing house, nor the disseminator of the mass media product is the proper defendant, because those persons have no right to interfere in the work of the editor's office during which the contents of reports and materials are determined.

Credit Organizations

On June 1, 2010, the RF Government adopted Decree No. 385 on Amendment of Decree of the RF Government, dated May 30, 2007, No. 335, by which it increased the amount of credit organization assets subject to anti-monopoly control.

Where the aggregate value of credit organizations' assets as per their recent balance sheets exceeds 33 billion rubles (formerly – 24 billion rubles), their merger requires a prior approval of anti-monopoly authorities. Where the value of assets as per the recent balance sheet of a credit organization whose shares and (or) property is contributed to the charter capital of a newly set up commercial organization exceeds 33 billion rubles (formerly – 25 billion rubles), such transaction also requires a prior approval of anti-monopoly authorities. Where the value of assets as per the recent balance sheet of a credit organization exceeds 33 billion rubles (formerly – 25 billion rubles), any transactions with its shares, assets, or rights with respect to such credit organization require a prior approval of anti-monopoly authorities.

A subsequent notification of anti-monopoly authorities is required from a credit organization in the event that it: (a) emerges as the result of a merger of credit organizations (within 45 days after the merger), if the aggregate value of assets as per the recent balance sheets of the credit organizations that cease to operate as the result of the merger does not exceed 33 billion rubles (formerly – 24 billion rubles); (b) mergers with (by way of accession to it of) one or several credit organizations (within 45 days after the merger), if the aggregate value of assets as per the recent balance sheets of such organizations does not exceed 33 billion rubles (formerly – 24 billion rubles); (c) enters into transactions or performs other actions in cases stipulated by Article 30(1)(6) of the Anti-Monopoly Law (within 45 days after the transaction or action), if the value of assets as per the recent balance sheet of the credit organization exceeds 2.5 billion rubles (formerly – 2 billion rubles).

Where the value of assets of a credit organization as per the recent balance sheet preceding the date of an agreement between financial organizations exceeds 390 billion rubles (formerly – 300 billion rubles), a subsequent notification of anti-monopoly authorities pursuant to Article 35(9) of the Anti-Monopoly Law is required.

Securities Market

The Federal Service for Financial Markets (FSFM) issued Order on the Approval of the Criteria and Procedure for Introduction of Foreign Stock Exchanges in the List of Foreign Stock Exchanges Whose Listing Must be Obtained for a Russian Stock Exchange to Allow Trading of Foreign Issuers' Securities Without Approval of the Federal Executive Authority for Securities Market of Such Securities Public Offering and/or Public Circulation in the Russian Federation, and on the Approval of the List, dated April 27, 2010, No. 10-29/pz-n.

For a foreign stock exchange to be on the List, it should concurrently meet the following criteria: (a) be a member of the World Federation of Exchanges (WFE) or the Federation of Euro-Asian Stock Exchanges (FEAS) or the International Association of Exchanges of the CIS Countries

(IAE CIS); (b) be founded in the state which is a member of the Organization for Economic Co-operation and Development (OECD), a member or an observer of the Financial Action Task Force on Money Laundering (FATF) and (or) a member of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL); or in a state with the corresponding body of which the Russian FSFM has an agreement for interaction.

If any foreign stock exchange on the List ceases to meet the above criteria, the FSFM may decide to exclude it from the List. The FSFM is to make decisions relying on certain sources which are specified in the Order. To date, the List includes 65 foreign stock exchanges.

Refinancing Rate

According to the information published by the Central Bank of Russia on May 31, 2010, the rate of refinancing has been established at 7.75% per annum effective June 1, 2010. The previous rate 8% was effective as of April 29, 2010. Interest rates for operations of the Bank of Russia have been revised accordingly.

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