

# ANDREY GORODISSKY & PARTNERS

## NEWSLETTER

### REVIEW OF THE NOTABLE CHANGES IN LEGISLATION

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#### **Securities Market**

1. The Order of the Federal Service on Financial Markets "On Approval of the Regulation on License Requirements and Terms of Professional Activities in the Securities Market" dated July 20, 2010, No. 10-49/pz-n, sets new license requirements applicable to professional activities in the securities market ("SM"). The Regulation applies to SM professional participants engaged in the business of: brokers, dealers, securities managers, depositaries, clearing houses, registrars, organizers of sales in a securities market and/or stock exchange.

Each type of professional activities in the securities market requires a specific license. The Order provides for opportunities and rules of combination of several types of professional activities in SM. It also sets license requirements and conditions regarding, in particular, the amount of licensees' own assets and qualification requirements for licensees' employees, and defines the grounds and procedures for suspension or cancellation of a license.

2. In its Information Letter dated September 16, 2010 the Federal Service on Financial Markets provides methodological recommendations on how issuers of securities should perform their obligation to disclose information through the Internet, in pursuance of the Regulation on Disclosure of Information by Issuers of Securities approved by the Order of the Federal Service on Financial Market of October 10, 2006, No. 06-117/pz-n.

In particular, an issuer may use its website on the Internet or any other website. It is recommended that a domain name of the website where the information is posted should be registered in the issuer's name. The issuer must ensure free and easy access to the information disclosed through the Internet. The Information Letter defines the term "free and easy access" which includes the possibility of download of a file containing the posted information, the absence of passwords and login procedure, free-of-charge access to the information, etc. Information content of the website section designated for disclosure of information should be prepared pursuant to internal regulations of the issuer as the source of the disclosed information. The Information Letter provides recommendations on posting of information with a breakdown by certain categories, subcategories and with indication of unique identifiers of posted documents (information).

## **Tax Regulations**

1. The Order of the Federal Tax Service of August 19, 2010, No. YaK-7-8/392@ defines the procedure for writing-off uncollectible arrears, penalties or fines assessed as of January 1, 2010 on organizations that meet criteria for a dormant legal entity.

The determination of the uncollectibility of a debt of an organization is made by the head of a local tax authority. The organization must meet a number of conditions: it must meet the criteria of a dormant legal entity, have a debt subject to the write-off and be not the subject of any bankruptcy procedures. It is also necessary that a ruling on termination of executory procedure in connection with the uncollectibility of the debt be in place. Also, the tax authority checks whether or not such organization had effected by operations on its bank accounts during the last 12 months.

2. On September 3, 2010 the Federal Tax Service published an Information Notice that provides clarifications on the amendments to the Tax Code introduced by the Federal Law of July 27, 2010, No. 229-FZ. In particular, it is explained that as of September 2, 2010 registration of an organization, registration of changes in its details and its de-registration at a local tax authority of the organization's branch office or representative office are made based on the records contained in the Consolidated State Register of Legal Entities; such registrations at a local tax authority of the organization's detached division are made based on the information submitted by the organization. Therefore, the application forms for registration (Form No. 1-2-Registration) and for de-registration (Form 1-4-Registration) approved by the Order of the Federal Tax Service of December 1, 2006, No. SAE-Z-09/826, are no longer applicable.

In the event of change of the location of a branch office (representative office), it is recommended to submit to the registration authority an application in any form indicating the former and the new addresses. The Information Notice provides the recommended forms and the procedure for completion of a notice of establishment of detached division, a notice of changes to in the previously reported information, a notice of closing of a detached division and a notice of the chosen tax authority for registration of several detached divisions located in the same municipality.

## **Customs Regulations**

1. On September 20, 2010 the Commission of the Customs Union adopted Resolution No. 376 "On Procedures for Declaration, Control and Adjustment of Customs Value of Goods" which sets the approved Procedure for Declaration of Customs Value of Goods, Procedure for Control of Customs Value of Goods and Procedure for Adjustment of Customs Value of Goods.

The purpose of the customs value control procedures is to check the declarant's compliance with requirements of customs law of the Customs Union regarding the choice and application of the method of calculation of customs value, its composition and amount and documentary evidence of declared customs value. There are pre-release and post-release procedures for control of customs value of goods. The Resolution provides forms of a customs valued adjustment resolution and an additional check resolution and defines the list of additional documents and information that may be requested by a customs authority.

The declaration procedure determines the terms of declaring customs value of goods, provision by the declarant (customs representative) of documents confirming it and a form of a customs value declaration as well as the rules of completion thereof.

The customs value adjustment procedures include: pre-release and post-release adjustment of customs value of goods, re-calculation of payable customs duties and taxes and the procedure for release of goods upon provision of a security for payment of customs duties and duties in the event that an additional check cannot be performed within the required timelines for release of goods.

2. The Commission of the Customs Union has published its Resolution of September 20, 2010,

No. 375, which approves, in particular: List of goods excluded from the customs warehouse regime; List of goods excluded from the regime of processing in the customs territory; Categories of goods for which a longer period for processing in the customs territory, as compared with that set by the Customs Code of the Customs Union, may be established; List of goods excluded from the regime of processing outside the customs territory; Procedure for suspension and resuming the temporary import regime after the goods temporarily imported have been placed under a different customs regime; List of categories of goods for which a longer temporary importation period, as compared with that set by the Customs Code of the Customs Union, and the maximum temporary importation period may be established.

3. The Ministry of Finance of Russia has published its Order "On Approval of the Procedure for Submission of Registers of Customs Declarations" of May 21, 2010, No. 48n, which sets the rules of submission of customs declaration registers to tax authorities to confirm the lawfulness of application 0% VAT and tax deductions in connection with sales of goods exported under the export customs regime. According to the Order, VAT taxpayers who sell goods exported under the export customs regime may submit to their local tax authorities customs declaration registers instead of customs declarations. The Order determines the procedure for submission of customs declaration registers.

### **Innovative Activities**

1. The Federal Law "On the Skolkovo Innovation Center" hereinafter "Skolkovo" or "Center") of September 28, 2010, No. 244-FZ, has been published. The Law is intended to regulate relations arising in connection with the implementation and functioning of the Skolkovo project. The Law regulates matters relating to the infrastructure in the territory of Skolkovo by establishing a special legal treatment of organizations participating in the project and determines the specifics of legal regulation concerning the project implementation, in particular: specifics of hiring foreigners for the purpose of implementation of the project, regulation of town-planning activities in the territory of the Center, placement and distribution of advertising materials in the territory of the Center, reimbursement of costs relating to customs payments, etc.

2. The Federal Law "On Amendment of Some Legal Acts of the Russian Federation in Connection with Adoption of the Federal Law "On the Skolkovo Innovation Center" dated September 28, 2010, No. 243-FZ, has been published. In particular, the Law makes changes to the Russian Tax Code, the Federal Law "On Bookkeeping", the Federal Law "On Licensing of Certain Activities", the Federal Law "On Mandatory Pension Insurance", the Federal Law "On Legal Status of Foreign Citizens in the Russian Federation" and some other laws. Generally, the Skolkovo-specific legal regime and relevant novelties introduced into federal laws are intended to grant to the project participants substantial benefits, exemptions and regimes minimizing the bureaucratic burden and to reduce the scope of authorization-based procedures.

### **Public Private Partnership**

In pursuance of Article 11 of the Federal Law "On Capital Investments in the Russian Federation" and Article 1791 of the Budget Code of the Russian Federation, on September 13, 2010 the Government of the Russian Federation issued the Resolution "On Approval of the Rules of Development and Implementation of Federal Targeted Investment Program", No. 716.

The Federal Targeted Investment Program ("Targeted Program") determines the distribution of budgetary allocations, as provided in the federal law on federal budget for next year and planning period, for implementation of investment projects relating to construction, reconstruction, technical modernization of capital construction objects and/or for implementation of other capital investment projects in the Russian Federation as well as acquisition of real estate objects (including residential premises) for needs of federal authorities and implementation of consolidated investment projects. The draft Targeted Program is developed and approved by the Ministry of Economic Development of the Russian Federation, which is required to report the progress of implementation of the Program to the Russian Government on a monthly basis.

The Program identifies public sector customer, developer, timelines for development of design documentation and commissioning, budgetary allocations, etc. for each object. The approved Targeted Program provides the basis for: a) placement of orders for goods, works or services for federal public needs; b) execution – for implementation of budgetary investments – of agreements with legal entities that are not government or municipal institutions or unitary enterprises and subvention agreements with executive authorities of constituents of the Russian Federation.

### **Labor Law**

1. On August 11, 2010 the Federal Migration Service adopted Order No. 250 approving the requirements applicable to a written offer for entry of a highly skilled specialist to Russia, the procedure for authorities' interaction during issuance of a regular business visa for entry of a foreign citizen on the basis of such offer. The Order sets the formal requirements for a written offer by which a foreign highly skilled specialist is invited to negotiate an employment agreement. A one-entry regular business visa is issued on the basis of the said offer by diplomatic missions or consular departments of the Russian Federations after the Federal Migration Service verifies the compliance with the requirements set in subsection 5 of Article 13.2 of the Federal Law "On Legal Status of Foreign Citizens".
2. The Order of the Ministry of Health and Social Development "On Identification of Cases Where a Foreign Citizen or Stateless Person Temporarily Staying (Living) in the Russian Federation Works Outside the Russian Federation Constituent Where a Work Permit (or Temporary Living Authorization) Was Granted" dated July 28, 2010, No. 564n, establishes that a foreign citizen or stateless person temporarily staying in Russia may work outside the Russian Federation constituent where he was granted a work permit if he works in one of the professional capacities/job positions provided for by the Order. The Order sets terms and permitted aggregate periods for such work.
3. On September 8, 2010 the Russian Government issued Resolution No. 700, which requires that an employer signing an employment agreement with individuals who previously held certain government or municipal offices not longer than 2 years must give the former employer of such former government or municipal official a written notice, made in a form required, of execution of the employment contract (within 10 days following the execution).

### **Arbitration Tribunal**

The Chamber of Commerce and Trade of the Russian Federation has published its Order of August 27, 2010, No. 39, approving the Rules of Unbiasedness and Independence of Arbitrators. The Rules are of a recommendatory nature and apply subject to parties' agreement, arbitration rules and provisions of applicable law. The Rules are intended to facilitate the identification of circumstances where the law requires self-recusation of an arbitrator or disclosure obligation or which serve the ground for rejection of an arbitrator candidate. The Rules also purport to prevent situations where parties groundlessly declare rejection of an arbitrator after commencement of arbitration proceedings.

The Rules set the criteria for an independent and unbiased arbitrator and identify the circumstances which are an absolute obstacle to exercise of the powers of an arbitrator or may bring about doubts regarding independence or unbiasedness. The Rules determine which circumstances must be disclosed if there are reasonable doubts about unbiasedness or independence of an arbitrator. The Rules set the procedures for a preliminary interview with a candidate arbitrator, candidate rejection and termination of an arbitrator's power under the circumstances that bring about reasonable doubts about the arbitrator's unbiasedness or independence. It is pointed out that the Rules may be used by Russian state courts during examination of appeals from arbitral awards or requests for issuance of writs of execution for enforcement arbitral awards rendered in the Russian Federation.

## **Court Practice. Compensation of Moral Harm. Mass Media**

On September 16, 2010 the Plenum of the Supreme Court issued Resolution No. 21 "On Amendment of Resolution No. 16 of the Plenum of the Supreme Court dated June 15, 2010 "On Practical Application by Courts of the Russian Federation Law "On Mass Media". The Resolution supplements the previous resolution with provisions granting a person whose personal non-property rights or other intangible benefits have been infringed through dissemination information in mass media the right to claim a compensation of moral harm. The compensation should meet the purpose of compensating physical or moral sufferings of such person and its amount should be reasonable and fair and not cause a violation of the freedom of mass media. It is noted that the right to claim a compensation of moral harm may not be exercised for any other purpose, in particular, for creation of a situation actually restricting each person's right to freely express his opinion, adhere to his opinion, receive and distribute information or ideas without any infringement by public authorities.

## **Review of Legislation and Court Practice of the Supreme Court of the Russian Federation**

On September 15, 2010 the Presidium of the RF Supreme Court approved by its resolution the review of Legislation and court practice of the RF Supreme Court for the second quarter of 2010. The Review contains, in particular, court decisions on civil-law disputes relating to intellectual property, material terms of a preliminary land plot purchase agreement, employment relations, and jurisdiction over the job reinstatement disputes between a joint stock company and its former general director.

The Review also contains excerpts from judgments of the European Court of Human Rights, in particular: on non-compliance with the principle of fair trial and the principle of equality of parties and adversarial; on unreasonable duration of legal proceedings and the lack of effective remedy against excessively long legal proceedings.

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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](mailto:office@agp.ru)

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