
LAW FIRM

ANDREY GORODISSKY & PARTNERS

NEWSLETTER

REVIEW OF THE NOTABLE CHANGES IN LEGISLATION

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Insider Information, Market Manipulation

Federal Law on Prevention of Illegal Use of Insider Information and Market Manipulation and on Amendment of Certain Legislative Acts of the Russian Federation, No. 224-FZ, was adopted on July 27, 2010. The purpose of the Law is to ensure fair pricing of financial instruments, foreign currency and goods, equality of investors and strengthening of their trust by creating a legal mechanism of prevention, detection and suppression of abuses at organized markets in the form of illegal use of insider information and/or market manipulation.

The Law regulates relationships connected with financial instruments, foreign currency and/or goods admitted or applied for admittance to organized markets in Russia, and with financial instruments whose price depends on financial instruments, foreign currency and/or goods admitted or applied for admittance to organized markets. Described are relationships to which the Law does not apply (in particular, operations of the Central Bank of Russia with financial instruments and foreign currency for implementation of the uniform state monetary and credit policy, protection and stabilization of ruble; operations of the RF Government and supreme executive authorities of the RF constituents with the aim of managing the state debt).

Insider information means accurate and specific information which was not disclosed or delivered (including commercial, official, bank, communication and other secrets protected by the law), disclosure of which may significantly influence the price of financial instruments, foreign currency and/or goods, and which if on the list of insider information contained in the law. The Law defines other terms used in it, e.g., "disclosure of information", "delivery of information".

The Law determines what data constitutes insider information, what persons

are to be regarded as insiders, and what actions may be recognized as market manipulation.

Stipulated are measures for prevention, detection and suppression of illegal use of insider information and market manipulation, such as limitations to the use of insider information and/or market manipulation, consequences of the use of insider information and/or market manipulation, rules on disclosure of insider information, requirements to the keeping and delivery of the list of insiders, notification by insiders of their operations, procedure for exercising state control, etc.

The Law determines the functions and powers of the federal executive authority in the financial markets area in counteracting illegal use of insider information and market manipulation.

The Law amends other normative acts, such as the Federal Law on Banks and Banking, Federal Law on Commodity Exchanges and Exchange Trade, Federal Law on the Securities Market, RF Criminal Code, and the Code of Administrative Offences.

Consolidated Financial Statements of Legal Entities

Federal Law on Consolidated Financial Statements, No. 208-FZ, adopted on July 27, 2010, regulates preparation and submission of financial statements of Russian legal entities. Credit and insurance organizations, as well as companies whose securities are admitted to biddings at stock exchanges and/or other organizers of trade in the securities market are obligated to prepare consolidated financial statements in accordance with the International Financial Reporting Standards (IFRS).

A legal entity is to submit consolidated financial statements along with its accounting reports prepared in accordance with national laws. It is established that subject to application in Russia are IFRS and IFRS Interpretations adopted by the Foundation of the International Accounting Standards Board (IASB) and recognized by the RF Government and the Central Bank of Russia. The Law sets the procedure and deadlines for submission of annual and interim consolidated financial statements. Annual consolidated financial statements must be published and audited. The auditor's report is to be submitted and published together with the consolidated financial statements.

Audit

Federal Law on Amendment of the Federal Law on Auditor's Activity, dated July 1, 2010, No. 136-FZ, broadens the list of entities subject to mandatory audit exclusively by audit organizations. Now, the list includes state corporations and companies, as well as legal entities in which the state owns no less than 25% interest. A contract for audit of the said legal entities is executed upon an open tender.

The Law contains provisions on insurance of liability of audit organizations, limitations to the audit of insurance companies that have contracts with auditors. The entity being audited is obligated to comply with the requirements of the federal standards of audit.

The main part of the Law entered into force on July 5, 2010.

On May 20, 2010, the RF Ministry of Finance issued Order on Approval of the Federal Standards of Audit, No. 46n. The approved Standards are based on international standards.

Microfinance

Federal Law on Microfinance and Microfinance Organizations, No. 151-FZ, was adopted on July 2, 2010.

According to the legislator, microfinance is the activity of legal entities having the status of a microfinance organization and of other legal entities entitled to grant microloans in accordance with the law. Microloan is a loan of no more than 1 million rubles. A microfinance organization is a legal entity registered as a foundation, an autonomous non-profit organization, an institution (except for a budget institution), a non-profit partnership, or a company or partnership, that deals in microfinance and is recorded in the state register of microfinance organizations in accordance with the set procedure.

The Law sets forth the basic conditions of granting microloans, the rights and obligations of microfinance organizations, the rights and obligations of the applicant for a microloan and of the borrower; contains certain limitations to the activity of microfinance organizations; obligates microfinance organizations to file reports on their operations and on the composition of their management bodies.

Microfinance organizations are recorded in the open register. The status of a microfinance organization may be obtained by going through a set procedure. The Law establishes grounds for refusal of recordation in the register and for striking off the register.

The Law will enter into force on January 1, 2011.

The adoption of the Law entailed the adoption on June 29, 2010 of the Federal Law on Amendment of Certain Legislative Acts of the Russian Federation in Connection with the New Federal Law on Microfinance and Microfinance Organizations, No. 131-FZ, whereunder a violation of the Microfinance Law entails administrative liability (warning or a fine from 10,000 to 30,000 rubles).

The Law on Amendment will enter into force on January 3, 2011.

Concession Agreements

According to the new Federal Law on Amendment of the Federal Law on Concession Agreements and Certain Legislative Acts of the Russian Federation, dated July 2, 2010, No. 152-FZ, immovable property or immovable property together with movable property technologically interconnected and intended for the activity stipulated by a concession agreement may be the object of the concession agreement (previously, it was immovable property only).

If the object of a concession agreement are municipal engineering systems and facilities, then at the time of execution of the concession agreement such property may belong to a state or a municipal unitary enterprise on the basis of the economic management right. The said unitary enterprise participates in the obligations under the concession agreement on the side of the concession grantor and exercises certain of the grantor's powers, including execution of delivery-acceptance statements.

The Law contains obligatory requirements to a concession agreement, including the deadline for delivery of the object, procedure for reimbursement of expenses in the event of termination; describes breaches on the part of the grantor which are recognized as material breaches of the concession agreement; introduces changes in the procedure for entering into a concession agreement without a tender.

The main part of the Law came into force on July 5, 2010.

Dispute Resolution – Mediation

Federal Law on Alternative Dispute Resolution Through Mediation, dated July 27, 2010 (the "Mediation Law") regulates a mediation procedure in disputes arising out of civil-law relationships, including in connection with entrepreneurial and other economic activities, and in disputes arising out of employment relationships and family relationships. The aim of the Mediation Law is to support the development of partner business relationships and formation of business ethics, create legal conditions for the application of alternative out-of-court dispute resolution procedures with participation of a mediator.

The Mediation Law establishes a legal foundation, conditions and a manner of application of the mediation procedure, its beginning and termination, determines the legal position of the parties, fixes the status of and requirements to the mediator. In particular, according to the Mediation Law, the activity of a mediator is not entrepreneurial and may be carried out both on a professional and on a non-professional basis. There exist certain requirements to a professional mediator, such as age limitation, level of education, and special training in mediation under a governmental program.

Mediation procedure may be applied in disputes referred to common courts and state commercial courts. If a dispute was first referred to a common court, a state commercial court or arbitration and then a mediator is invited, such mediator must be a professional.

The Mediation Law contains requirements to mediation agreements and confidentiality provisions. Organizations dealing in mediation may form associations (unions). Mediators may set up self-regulating organizations.

The Mediation Law will enter into force on January 1, 2011.

The adoption of the Mediation Law made it necessary to introduce changes in the RF Civil Code, Code of Arbitration Procedure, Code of Civil Procedure, Federal Law on Arbitration in the Russian Federation, Federal Law on Advertising (by Federal Law on Amendment of Certain Legislative Acts of the Russian Federation in Connection with the Adoption of the Federal Law on Alternative Dispute Resolution Through Mediation, dated July 27, 2010, No. 194-FZ).

The flow of the limitation period will be suspended in the event that the parties enter into a mediation agreement. The disputing parties have the right to invite a mediator, and a court should make the parties aware of such right, together with other procedural rights. The said right is exercisable at any stage of civil or arbitration proceedings which should then be adjourned for a corresponding period of time. A written agreement executed by the parties as the result of the mediation procedure with respect to the dispute that was referred to arbitration (a mediative agreement) may be approved by the arbitrators as a settlement agreement. A mediator assisting the parties in the settlement of their dispute may not be questioned as a witness about the circumstances that came to the mediator's knowledge in connection with the performance of his/her corresponding duties.

Advertising of the services of non-certified mediators is not allowed. The advertisements of mediators must not state that mediation has advantages over dispute resolution in court.

The Law on Amendment will come into force on January 2, 2011.

Arbitration Process (State Commercial Courts)

Federal Law on Amendment of the RF Code of Arbitration Procedure, dated July 27, 2010, introduced certain important changes.

The chairman of the panel of judges has the right to decide on a collegial consideration of the case due to its exceptional complexity upon a reasoned request of one of the judges. In the collegial consideration of the case, one of the judges may submit a dissenting opinion. The procedure for selection of judges has been changed. The provisions on the jurisdiction of state commercial courts over disputes has been supplemented. Under a general rule, the decision of the court of first instance may be appealed to a cassation instance, provided that it has been considered by the appeal instance or provided that the appeal instance refused to reinstate the missed limitation period for filing an appeal.

Upon receipt of the first judicial act in a case, the persons participating in

the arbitration proceedings are obligated to obtain information about further developments themselves. If the court has information that the persons participating in the proceedings were duly notified of the beginning of the process, they bear the risk of unfavorable consequences of their failure to obtain information about further developments of the case.

On June 1, 2010, the Plenum of the RF Supreme Arbitration Court issued Disposition on Certain Issues Connected with Participation of Judges in the Delivery of Justice, No. 38. The Disposition contains clarifications regarding the appointment and participation of judges, in particular, if several plaintiffs and/or defendants are involved in a case or if several cases of the same kind are consolidated.

Criminal Law

Federal Law on Amendment of the RF Criminal Code and Article 151 of the RF Code of Criminal Procedure, No. 147-FZ, was adopted on July 1, 2010.

The Criminal Code has been supplemented by a number of new articles establishing criminal liability for: (a) falsification of the Consolidated State Register of Legal Entities, register of securities owners, records of depositaries; (b) falsification of a decision of the general meeting of shareholders (participants), a decision of the board of directors (supervisory board); (c) recordation of knowingly false information in consolidated state registers.

The Law came into force on July 5, 2010.

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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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