

## Anti-Monopoly Law

The Federal Law on Amendment of the Federal Law on Protection of Competition and Certain Legislative Acts of the Russian Federation and the Federal Law on Amendment of the RF Code of Administrative Offences, constituting the “third anti-monopoly package”, came into force on January 6 and January 7, 2012 respectively.

The basic changes are aimed at making clearer the requirements to anti-competition agreements and coordinated actions, criteria of a monopolistically high price, the procedure for exercise of state control over economic concentration, and the procedure for consideration of cases connected with violation of anti-monopoly law.

The Laws broaden the terms “economic entity”, “signs of competition limitation” and introduce the term “an entity being the object of economic concentration” (an entity whose shares, assets, basic production facilities and (or) non-material assets are acquired or contributed to the charter capital). The Law excludes from the list of actions qualified as the coordination of economic activity the actions of economic entities performed under “vertical” agreements.

The list of signs for determination of a group of persons and the list of signs of a cartel have been shortened. At the same time, the list of actions constituting abuse of the predominant position has been broadened. The signs showing that the actions of economic entities are coordinated and prohibited have been made more specific. No longer prohibited are coordinated actions of competitors whose aggregate share in the commodities market does not exceed 20%, and the share of each of them – 8%.

Criminal liability continues to exist for a cartel collusion only and is excluded for coordinated actions and “vertical” agreements. Administrative liability of companies for violation of anti-monopoly law is differentiated. Abuse of the predominant position which infringes upon the interests of counterparts but does not limit competition is punished by imposition of a fixed fine, not by a “floating” fine imposed previously. The Code of Administrative Offences has been supplemented with the circumstances which mitigate and aggravate administrative liability for violation of anti-monopoly law.

Increased are the threshold figures of the total value of assets (from 3 to 7 billion) and the total revenue (from 6 to 10 billion) of commercial organizations, entailing obligatory obtainment of preliminary consent of the Federal Anti-Monopoly Service (the “FAS”). The FAS’s preliminary consent is now required for the acquisition of over 50% of voting shares and other rights in foreign companies.

The Law introduces a new rule on transactions and other actions subject to state control over economic concentration with respect to shares of organizations (including foreign ones) supplying goods to Russia in the amount of over 1 billion rubles during one year preceding the date of the transaction (action).

The FAS has now broader powers in the establishment of the fact of violation or potential violation of anti-monopoly laws. In particular, the FAS is entitled to issue an obligatory direction to perform certain actions to remedy violations; a warning to the officers of an economic entity publicly declaring its proposed behavior in the market, if such declaration might lead to violation of anti-monopoly laws; and a warning to the economic entity occupying a predominant position to discontinue violation of anti-monopoly laws by its actions (omissions). Persons held administratively liable for violation of anti-monopoly laws will be recorded in a special register.

Certain procedural rules concerning investigation and consideration of administrative offences have been made more specific.

### **Pledge. Mortgage**

Federal Law on Amendment of Certain Legislative Acts of the Russian Federation to the Extent of Improvement of Levy of Execution on Pledged Property, dated December 6, 2011, No. 405-FZ, will come into force on March 7, 2012. The changes concern provisions on the levy of execution on the object of pledge and its sale, rules on mortgage of certain types of real estate and registration of the mortgage.

The requirement that a separate consent of the mortgagor to the out-of-court levy of execution be certified by a notary has been excluded: if the mortgagor is an individual or if the out-of-court procedure is agreed upon with respect to the object of mortgage, a provision on such procedure included in the pledge agreement would be sufficient. To enforce levy of execution on the basis of a notary's executive inscription, it will be necessary to have the mortgage agreement certified by a notary, or, if mortgage arises by virtue of law, - the agreement serving as the basis for such mortgage. Such notarized agreements have certain advantages: information on the possibility of the out-of-court levy of execution should be recorded in the Consolidated State Register of Legal Entities; the statutory terms for state recordation of mortgage are shorter. Besides, if mortgage is recorded on the basis of a notarized mortgage agreement, the notary bears responsibility for legal examination of relevant documents and legality of the transaction.

Regarding the out-of-court levy of execution on pledged (mortgaged) property it is established that when providing for such a possibility in the agreement the parties are not required to specify the means of disposal of the property. Primarily, such change is important for agreements concerning real estate, because the means of disposal of the mortgaged real estate continues to be a material provision of the mortgagor's and the mortgagee's agreement on the out-of-court levy of execution until the Law comes into force.

With respect to the means of disposal of the mortgaged real estate, the Law excludes acquisition of the mortgaged property by the mortgagee for third parties (such disposal may be used until the Law comes into force). Thus, so far, if the mortgagee chooses to retain the mortgaged property and then sell it to a third party, he must first purchase the mortgaged property himself and sell it afterwards. However, once the Law comes into force, it will be possible to provide for several ways of disposal that may be used at the mortgagee's discretion.

The Law pays special attention to the formalization of an agreement on the out-of-court levy of execution on the pledged (mortgaged) property. In particular, it is stipulated that the parties may agree on the out-of-court procedure only by including such provision in the corresponding pledge (mortgage) agreement. If pledge arises by virtue of law, the parties may agree on the out-of-court procedure by signing a pledge (mortgage) agreement and its provisions may be included in an agreement that entails lien by virtue of law.

Besides, the Law gives the parties the possibility to agree on the means of and procedure for disposal of the pledged (mortgaged) property when levy of execution is ordered by a court. Such agreement must be included in the pledge (mortgage) agreement or in a separate agreement if the pledge (mortgage) arises by virtue of law, provided the rules on state recordation of the pledge (mortgage) are observed. The Law also makes more specific and introduces new events where levy of execution may be obtained in court only or is not allowed at all.

Of no small importance is an addition to the Law on Limited Liability Companies: levy of execution on the share (part of the share) of a participant is allowed in the out-of-court procedure on the basis of the pledge agreement containing a provision on the possibility of such procedure.

## **Accounting**

The promulgated new Federal Law on Accounting, dated December 6, 2011, No. 402-FZ, will come into force on January 1, 2013 and replace the current one.

The Law is aimed at establishing uniform requirements to accounting, including financial statements, and creating a legal mechanism for regulating accounting that would correspond to the current trends.

The Law stipulates the following objects of accounting: facts of the economic life of the company (transactions, events, operations that might influence the company's financial condition), assets, obligations, sources of financing, revenues, expenses, other objects. Previously, property, obligations and operations were the only recognized objects of accounting.

The Law imposes the obligation to maintain accounting on all subjects of economic activity (including those using a simplified system) with the exclusion of individual entrepreneurs, persons involved in private practice, branch offices, representative offices or other structural subdivisions organized in accordance with the laws of a foreign state.

Under the Law, organizations may independently develop the forms of initial documents and registers, provided they comply with the requirements to the obligatory statutory details of such documents and registers. Thus, it is no longer necessary to use the uniform forms of initial accounting documentation. Special attention deserves the fact that from now on initial accounting documents may be drawn up as electronic documents signed by an electronic signature.

The head of an organization may only independently maintain accounting if the organization falls in the category of small or medium entrepreneurship. Besides, the Law sets special qualification requirements to the accountants of open joint stock companies, insurance companies, investment and pension funds.

The Law sets forth specifics of accounting (financial statements) in the event of reorganization and liquidation of a legal entity, in particular, it determines the reporting year of the legal entity under reorganization (liquidation), manner and deadlines of accounting.

### **Judicial System - Intellectual Property Right Courts**

Federal Constitutional Law on Amendment of the Federal Constitutional Law on the Judicial System of the Russian Federation and the Federal Constitutional Law on Arbitration Courts of the Russian Federation in Connection with the Creation of the Intellectual Rights Court in the System of Arbitration Courts, dated December 6, 2011, No. 4-FKZ, has come into force. The new specialized arbitration court should be formed no later than February 1, 2013.

The Intellectual Rights Court has jurisdiction over disputes connected with protection of intellectual rights as the court of the first and cassation instances. Such disputes include contestation of the regulations of federal executive authorities concerning the rights and lawful interests of the plaintiff in the field of intellectual activity and means of individualization, including patent rights, rights to achievements in selection, integral microcircuits topology, know-how, etc. The Court also considers disputes over granting or termination of legal protection of intellectual activity results and similar means of individualization of legal entities, goods, work, services and enterprises (except for the objects of copyright and related rights, and integral microcircuits topology).

The decision on the beginning of the Intellectual Rights Court's activity is made by the Plenum of the RF Supreme Arbitration Court and is officially announced. Cases falling under the jurisdiction of the Court but being in the docket of common courts on the date of the beginning of the Court's activity are subject to consideration by common courts.

### **Decrease of Penalty – Court Practice**

Ruling of the Plenum of the RF Supreme Arbitration Court on Certain Issues of Application of Article 333 of the RF Civil Code, dated December 22, 2011, No. 81.

According to the Ruling, the conditions of an agreement on non-application or limited application of Article 333 of the RF Civil Code and the ceiling of the penalty amount set in the agreement do not preclude consideration by a court of the penalty decrease. In such cases the court consideration should be triggered by a corresponding application of the defendant. The defendant may claim that the amount of penalty is disproportionate to the consequences of default (breach of obligations) before the court of first instance only. Such application may not by itself be regarded as the defendant's acknowledgement of the debt to the plaintiff or the fact of the obligation breach.

The provisions of Article 333 of the RF Civil Code are applied, with regard for the clarification of the RF Supreme Arbitration Court, where the amount of penalty is determined by the law. Besides, after the penalty is charged off the debtor's bank account on request of the creditor, the debtor is entitled to claim that the charged off penalty be subject to the application of Article 333. For example, for this purpose the debtor may file a separate claim for return of the excessively paid sum. The creditor's right to claim payment of the lawful penalty does not preclude the parties from decreasing its amount in a settlement agreement.

With regard for the clarification of the RF Supreme Arbitration Court, the provisions of Article 333 of the RF Civil Code are also applied to liability for non-performance of an agreement secured by earnest money. When recovering a double amount of earnest money from the breaching party, the court may, on request of the defendant, decrease half of the claimed sum in accordance with Article 333 of the RF Civil Code.

### **Lease – Court Practice**

Ruling of the Plenum of the RF Supreme Arbitration Court on Certain Issues of Application of the Rules of the RF Civil Code on a Lease Agreement, dated November 17, 2011, No. 73, explains how courts should apply the Civil Code rules on agreements for lease of state and municipal property for a new term (renewal of the lease agreement), exercise of the lessor's priority right, specifics of performance of the obligation to pay the rent and land tax, and distribution of the burden of the property maintenance in the event of its further buy-out.

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