

# ANDREY GORODISSKY & PARTNERS

## NEWSLETTER

### REVIEW OF THE NOTABLE CHANGES IN LEGISLATION

No. 04/2009  
April 2009

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#### **Securities Market**

The Federal Service for Financial Markets has issued Order on Temporary Non-Application of the Capitalization Requirements to Shares Subject to Exclusion from the Listings of Stock Exchanges, dated February 10, 2009, No. 09-5/pz-n, whereby stock exchanges are allowed not to apply during the period up to January 1, 2010 the capitalization requirements for A (first and second levels) and B listings of shares in the decision making as to exclusion of shares from the said listings.

The Order extends to legal relationships that arose after January 1, 2009, was published in the *Rossiyskaya Gazeta* on March 17, 2009 and came into force as of March 28, 2009.

#### **Offshore Zones**

The Ministry of Finance issued Order No. 10n of February 2, 2009 amending its Order No. 108n of November 13, 2007 to include the Republic of Seychelles in the List of states and territories providing preferential tax treatment and (or) non-disclosure of information in the course of financial operations (offshore zones).

The new Order was published in the *Rossiyskaya Gazeta* on March 6, 2009 and came into force as of March 17, 2009.

#### **Aviation**

New Federal Law on State Registration of Title to and Transactions with Aircrafts, dated March 14, 2009, No. 31-FZ, applies to civil aircrafts and state-owned aircrafts used for commercial purposes. The Law establishes grounds for state registration of rights to aircraft, requirements to documentation, grounds for suspension and refusal of registration, and specifics of state registration of certain rights to aircraft.

According to the Law, subject to mandatory state registration are rights to aircrafts the title documents for which were formalized after the effective date of the Law. State registration of rights that arose before the effective date of the Law is conducted on request of the right holder. State registration of a transfer of title to aircraft, encumbrances on and transactions with aircraft is impossible unless the title and earlier rights

underwent state registration.

State registration is conducted within one month following filing of requisite documents and is confirmed by a certificate of state registration of title to aircraft or (if a transaction is registered) by the registrar's special notation on the corresponding agreement. Information on state registration of title to aircraft is recorded in the Consolidated State Register of Title to Aircrafts, is open information and is provided for a charge within 5 days in the form of an excerpt on an application of any interested person. The corresponding details of the registered title to aircraft are provided to the title holder, heads of governmental authorities of the RF constituents, tax and anti-monopoly authorities, and other bodies and persons listed in the Law.

The Federal Law was published in the *Rossiyskaya Gazeta* on March 17, 2009 and will come into force as of September 14, 2009.

### **Taxation. Temporary Disability Allowance**

The Tax and Customs Tariffs Policy Department of the RF Ministry of Finance in its Letter of February 12, 2009, No. 03-03-06/1/60 (published in March) explains the procedure for accounting, for profit tax purposes, of expenses in the form of additional payments by employer to workers in the event of their temporary disability to compensate for the difference between the amount of the social temporary disability allowance and worker's wages, and application of the single social tax and the personal income tax in this connection.

If the said additional payments are stipulated by local laws, collective agreements and (or) employment agreements, then in the calculation of the profit tax employer may treat such additional payments as deductible expenses on wages. Employer's expense will be a sum by which the actually paid temporary disability allowance in the amount of the actual (average) wages exceeds the maximum temporary disability allowance established by the Social Insurance Fund. It is further explained that such additional payments attract the personal income tax and the single social tax.

The maximum temporary disability allowance established by the Social Insurance Fund is: for the year 2009 – 18,720 rubles, for the year 2010 – 20,030 rubles, for the year 2011 – 21,390 rubles.

### **Labor Laws**

The RF Ministry of Health and Social Development by its Order of December 2008, No. 702n, approved the Administrative Rules on Performance by the Labor and Employment Federal Service of the State Function to Inform and Advise Employers and Workers on the Matters of Compliance with Labor Laws and Other Relevant Regulations (the "Rules").

According to the Rules, the Labor and Employment Federal Service (Rostrud) is to place in mass media (including its official website) informational and reference materials and recommendations regarding compliance with labor laws, inform employers about draft documents containing labor law rules, advise employers and workers free of charge on the matters of application of certain provisions of labor laws and regulations.

Advice is provided on a written request addressed to Rostrud (or its territorial division) or through Rostrud's official website by filling in an electronic form. Response should be given within 30 days of registration of a written request or electronic application-questionnaire.

The Order was published on February 16, 2009 in the *Bulletin of Normative Acts of the Federal Organs of Executive Power* and came into force as of February 27, 2009.

### **Lawmaking. Anti-Corruption Measures**

In early March 2009, adopted were certain decrees aimed at enhancing the effectiveness of anti-corruption measures at the stage of elaboration of statutory rules and regulations, namely: Governmental Decree on Approval of the Rules on Expert Examination of Draft Statutory Acts and Other Documents to Trace Provisions Furthering Creation of Conditions for Corruption Practices, dated March 5, 2009, No. 195; Governmental Decree on Approval of the Methods of Expert Examination of Draft Statutory Acts and Other Documents for Tracing Provisions Furthering Creation of Conditions for Corruption Practices, dated March 5, 2009, No. 196; and Governmental Decree on Amendment of Certain Statutes of the RF Government, dated

Subject to expert examination as to corruption triggering are draft normative legal documents touching upon, i.a., human and citizen's rights and freedoms, and establishing the legal status of an organization (except for draft documents containing state secret).

Expert examination is conducted by the RF Ministry of Justice, accredited legal entities and individuals. Accredited legal entities and individuals conduct independent expert examination of draft documents as to corruption triggering at their discretion and own expense. The Rules establish requirements to and procedure for accreditation, as well as the term within which independent expert examination can be conducted.

The Methods state that provisions capable of furthering corruption practices in the application of the document are regarded as corruption factors, such as factors connected with the exercise of governmental authorities' powers, factors connected with legal gaps, and factors inherent in the system. Defined are specific forms in which corruption factors express themselves, e.g., indeterminate time periods, conditions or grounds for decision making, existence of duplicate powers of authorities, etc.

The results of expert examination are stated in a report. All corruption triggering provisions found in the draft document are eliminated at the stage of finalization. If the author of the draft legislative document does not agree with the examination results, he may present the draft to the RF President or RF Government for consideration, enclosing an explanatory note and all expert examination results.

### **Personal Data**

Governmental Decree on the Federal Service for Supervision in the Sphere of Communications, Information Technologies and Mass Communication, dated March 16, 2009, No. 228, reorganized the Federal Service for Supervision in the Sphere of Communications and Mass Communication into the Federal Service for Supervision in the Sphere of Communications, Information Technologies and Mass Communication (Roskomnadzor).

The new Service performs, i.a., the functions of control and supervision over compliance of personal data processing with the requirements of law. Roskomnadzor is a federal agency authorized to safeguard the rights of the subjects of personal data and acts under the RF Ministry of Communications and Mass Communication.

### **Illegal Use of Trademarks – Court Practice**

In connection with the much-talked-of ban on importation of a foreign-made motor vehicle due to illegal use of the manufacturer's trademark by the importer (import of goods marked with the manufacturer's trademark in the absence of authorization from the trademark owner), the Presidium of the RF Supreme Arbitration Court in its Ruling of February 3, 2009, No. 10458/08, indicates that by illegal use of a trademark the RF Code of Administrative Offences assumes illegal reproduction of the trademark. If the product imported to the territory of Russia bears markings made by the valid owner of the trademark, then the importer's actions have no signs of illegal reproduction of the trademark, and there exist no grounds for holding the importer liable for illegal use of the trademark.

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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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