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Newsletter

An Overview of Changes in Legislation

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Insider Information

Order of the Federal Service for Financial Markets on Approval of the Regulations on the Procedure and Time-Terms for Disclosure of Insider Information of the Persons Indicated in Clauses 1-4, 11 and 12 of Article 4 of the Federal Law on Counteractions Against Wrongful Use of Insider Information and Manipulation of the Market and on Amendment of Certain Legislative Acts of the Russian Federation, dated February 28, 2012, No. 12-9/pz-n.

Under the general rule, the insider information of insiders is subject to disclosure in the manner and within the time-terms established by the legislative acts of the Federal Service for Financial Markets for disclosure of information about significant facts of securities issuers. The Order outlines specifics of mandatory publication of communications in Internet. When publishing information in Internet, an insider must ensure a free and easy access to such information and disclose at the request of interested persons the address of the Internet page on which the information is published. The Order establishes deadlines for publication of communications. The requirement to publish communications in the news feed is not applied to communications about insider information of trade organizers, clearing organizations, depositaries and credit organizations conducting settlements under transactions made through trade organizers.

If the insider information of insiders is contained in the documents of the above-mentioned persons, including documents approved by their authorized bodies and (or) signed by their authorized persons, such insider information is to be disclosed by providing access to it for any interested persons irrespective of the purpose for which the information is obtained. The Order indicates how access should be provided.

The Order also specifies what kind of insider information is not subject to disclosure in accordance with the Regulations. In particular, the information of an issuer about the resolutions of its board of directors being duly classified by the issuer as confidential information, about the terms and provisions of an agreement for stabilization of securities prices; insider information of professional participants of the securities market carrying out operations with financial instruments for their clients (information contained in the clients' instructions for transactions with securities, execution of agreements being derivatives of financial instruments; information constituting material conditions of trust agreements for transactions with securities and (or) execution of agreements being derivatives of financial instruments).

According to the Regulations, persons disseminating information are not required to perform any other actions except for disclosure of insider information of certain persons indicated as insiders in the corresponding law.

Town-planning

Decree of the RF Government on Amendment of the RF Government Decree of December 29, 2008 No. 1070, dated April 12, 2012 No. 288, and Decree of the RF Government on Approval of the Regulations on the Organization and Conducting of Non-Governmental Expert Examination of Project Documentation and (or) Results of Civil-Engineering Survey, dated March 31, 2012, No. 272.

Both Decrees specify the procedure for accreditation of legal entities for conducting non-governmental expert examination of project documentation or civil-engineering survey results. In particular, they contain the list of documents to be submitted by an applicant and the deadlines for their consideration.

Legal entities that obtained such accreditation before April 1, 2012 may conduct expert examination, if they meet the established requirements, without renewal of the accreditation.

According to the Regulations, expert organizations may not conduct non-governmental expert examination if they themselves prepared project documentation or carried out civil-engineering survey. The procedure for conducting non-governmental expert examination, including preparation of an expert opinion, its signing, approval and challenging, is the same as that established for state expert examination of project documentation and (or) civil-engineering survey results. Expert examination is conducted on the basis of a contract in which the parties set forth the corresponding procedure, deadlines and the amount of examination fee.

Banking

Direction of the Bank of Russia on Amendment of Section 6.1.1 of the Bank of Russia's Direction of January 16, 2004 No. 1379-U on Assessment of the Financial Stability of a Bank for Regarding it as Sufficient for Participation in the System of Deposits Insurance, dated February 28, 2012, No. 2788-U, came into force on April 22, 2012.

Information about persons that significantly influence management decisions of a bank participating in the system of deposits insurance must be disclosed by the bank in Internet. Such information should be placed in the form of a list of persons that significantly influence (directly or indirectly) decision-making by the bank's management bodies and the scheme of interactions between the bank and such persons, indicating third persons through which significant influence is exerted indirectly. Examples and forms are contained in the Bank of Russia's Regulation No. 345-P.

Bank Guarantees – Court Practice

Ruling of the Plenum of the RF Supreme Arbitration Court on Certain Issues of the Practice of Consideration of Disputes Connected with Contestation of Bank Guarantees, dated March 23, 2012, No. 14.

When considering disputes over bank guarantees, courts should take into account that a failure to indicate in a bank guarantee all conditions of the obligation secured by the guarantee does not serve as a ground for its contestation. The requirement of the RF Civil Code that a bank guarantee should specify the secured obligation is to be considered as satisfied if the guarantee makes it possible to identify the debtor under the secured obligation, specifies the amount to be paid by the guarantor and has a reference to the contract out of which the obligation of the principal before the beneficiary arose.

A bank guarantee issued for a period that is shorter than the term set for performance of the secured obligation may not be found invalid on that ground, because it secures other obligations that may arise between the principal and the beneficiary before the said deadline (for example, in connection with a unilateral termination of the contract, return of the advance payment, etc.).

With respect to the simple written form of a bank guarantee, the Ruling indicates that the requirement of Article 368 of the Civil Code (written form of a bank guarantee) is regarded as satisfied where the guarantee is sent as an electronic communication, including with the use of SWIFT, because the Civil Code does not prohibit a unilateral transaction made by way of a corresponding document which is sent via post, telegraph, teletype, telephone, electronic or other communication that makes it possible to establish for certain that the document comes from the person that has made the unilateral transaction.

With reference to the Civil Code and the effective Federal Law on Accounting, the Plenum also explains that the chief accountant is not a legal entity's body, consequently, the signature of the chief accountant on documents drawn up by the legal entity does not evidence the absence of the legal entity's will to make the corresponding transaction. Therefore, the absence of the signature of the chief accountant of the legal entity that issued the bank guarantee does not serve as a ground for finding the bank guarantee invalid.

Arbitration Process – Court Practice

Ruling of the Plenum of the RF Supreme Arbitration Court on Amendment of the Supreme Arbitration Court Plenum's Ruling of June 30, 2011 No. 52 on Application of the RF Code of Arbitration Procedure in a Review of Judicial Acts Due to New or Newly Discovered Circumstances, dated March 23, 2012, No. 12.

The Ruling gives a new version of Clause 11 of the Plenum's Ruling No. 52. The said Clause contains grounds and procedure for a review of judicial acts due to new circumstances in connection with the formation of a legal approach of the Plenum or the Presidium of the Supreme Arbitration Court. Article 311(3)(5) of the Code of Arbitration Procedure fixates the possibility of such review.

It is established that if a ruling of the Plenum or the Presidium contains several legal approaches, a retroactive force may be given to one of them and the corresponding act should contain an express wording to this effect. Without such express indication and with the provision on the retroactive force, its effect extends to all legal approaches formulated in the said ruling. A ruling of the Plenum or the Presidium may determine the segment of judicial acts which such provision extends to.

Special attention is paid to the situation where a ruling does not contain the retroactive force provision. Then the Plenum or the Presidium may determine the boundaries for application of the legal approach formulated by it, in particular, by indicating the date on which the relationship it is applied to arises or changes.

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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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