
LAW FIRM

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NEWSLETTER

REVIEW OF THE NOTABLE CHANGES IN LEGISLATION

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Civil Law. Intellectual Property – Court and Law Application Practice

Joint Ruling of the Plenum of the RF Supreme Court and the Plenum of the RF Supreme Arbitration Court on Certain Issues Given Rise by the Enactment of Part Four of the RF Civil Code, dated March 26, 2009, No. 5/29, clarifies the issues concerning rights to the results of intellectual activity and the means of individualization.

The Ruling gives detailed explanations and recommendations regarding certain questions that arise in the law application and court practice after enactment of the Civil Code Part IV, such as jurisdiction over disputes; application of the Law Introducing Part IV of the Civil Code; calculation of set terms; procedure for and limits of consideration of claims connected with infringement of rights. The higher court instances give interpretation of certain legal terms, such as "intellectual property", "reproduction for personal purposes"; explains matters that are not regulated clearly enough by the special rules of Part IV based on application to them of general rules of the Civil Code (i.a., limits of and procedure for pledge of exclusive rights, contribution of exclusive rights to the charter capital); gives explanations regarding: application of law in the execution, performance and termination of agreements for assignment of the exclusive right and license agreements, in the use of and to a work created in the course of employment; the right to a compensation for use of intellectual property; interpretation of law rules on company name; procedure for and consequences of consideration of objections against issuance of a patent or against registration of a trademark (with concentration on the details of pre-court procedures and consequences of court decisions, including certain actions of the Patent and Trademark Office).

The courts are given recommendations as to application of law rules on the abuse of right (Article 10 of the Civil Code) in disputes over trademark rights; consideration of claims contesting obtainment of registration of a trademark as the act of unfair competition (in particular, explained are the procedure for establishment or contestation of the fact of unfair competition and corresponding legal consequences).

Taxation – Court and Law Application Practice

The RF Constitutional Court in its Ruling in the Proceedings for Verification of the Validity of the Provision Contained in Paragraphs Four and Five of Article 89(10) of the RF Tax Code ..., dated March 17, 2009, No. 5-P, found the said Tax Code provision incompliant with the RF Constitution to

the extent where the said provision allows tax authorities to conduct a repeated tax audit if the results of the initial audit have been considered by the court and the court judgment has become effective.

The Constitutional Court qualified the repeated tax audit as an out-of-court verification of the court judgment, which is inadmissible.

To the extent the contested provision of the Tax Code allows a higher tax authority to make a decision that actually overcomes the effective court judgment, and if the tax payer is forced to pay the tax on the basis of the administrative decision issued contrary to the effective court judgment, according to the Ruling of Constitutional Court such payment may not be regarded as complying with the criterion "validly assessed tax". In such case takes place an expropriation of property in the form of tax and other payments conducted in an improper procedure.

Civil Process

Two laws have been adopted to amend the Code of Civil Procedure.

Federal Law on Amendment of Article 144 of the RF Code of Civil Procedure, dated April 5, 2009, No. 44-FZ, which widens the list of persons on whose initiative a preliminary injunction may be revoked. Now, this right is vested in all persons involved in court proceedings. Previously, a preliminary injunction was revoked exclusively on a plea of the defendant or on the initiative of the judge or court.

Federal Law on Amendment of Articles 34 and 131 of the RF Code of Civil Procedure, dated April 5, 2009, No. 43-FZ, grants the prosecutor the right to apply to a court for protection of social rights of individuals (the labor rights, social welfare, protection of health, etc.) on the basis of corresponding requests from citizens. Previously, the prosecutor could seek in court protection of rights, freedoms and lawful interests of those individuals who were unable to do it themselves (due to the state of health, age, lack of legal capacity, and other goods reasons).

Civil Law

Federal Law on Amendment of Article 825 of Part Two of the RF Civil Code and Recognition of Article 10 of the Federal Law on Enactment of Part Two of the RF Civil Code as Void, dated April 9, 2009. No. 56-FZ, specifies what organizations may enter into factoring contracts (financing against assignment of the right of monetary claim) as financial agents. Previously, the Civil Code established that credit organizations and other commercial organizations holding appropriate licenses were entitled to enter into factoring contracts as financial agents. Since the Law on Licensing does not provide for licensing of that kind of activity, the Amendment allows any commercial organization to enter into factoring contracts as financial agent without a license.

Non-Profit Organizations

In connection with the transfer to the RF Ministry of Justice of the functions of the Federal Registration Service for Registration of Non-Profit Organizations, the Ministry of Justice by its Order of March 31, 2009 No. 96, approved the Administrative Rules on Decision-Making as to State Registration of Non-Profit Organizations (the "Rules"). The Rules establish a new procedure for registration of non-profit organizations at the time of setting up, reorganization, liquidation, amendment of constitutive documents; contain the list of documents required for registration and requirements to their formalization; enumerate grounds for refusal of registration. Once a decision is made to register a non-profit organization, the documents are forwarded to the local department of the Federal Tax Service for making an appropriate record in the Consolidated State Register of Legal Entities. The term set for registration is maximum 33 days for public associations, 30 days for political parties, 17 business days for other non-profit organizations (which does not include the

time during which the tax authorities perform their functions).

Order of the Ministry of Justice, dated March 25, 2009, No. 84, approves the new forms of documents necessary for setting up and operation in Russia of branches and representative offices of international organizations and foreign non-profit non-governmental organizations: a notification of the setting up of a branch (representative office); a notification of the change of details contained in the setting up notification; an excerpt from the Register of branches and representative offices of international organizations and foreign non-profit non-governmental organizations.

Besides, Order of the Ministry of Justice on Approval of the Administrative Rules on Provision by the Ministry of Justice of Information about Registered Organizations to Individuals and Legal Entities, dated March 31, 2009, No. 89, establishes a procedure for provision of information contained in the Register of non-profit organizations; Register of branches and representative offices of international organizations and foreign non-profit non-governmental organizations; and other Registers maintained by the Ministry of Justice. Determined are the scope of information, the time period during which it should be provided (maximum 9 business days) and the reasons for refusal to provide information.

State Supervision

On April 28, 2009, Federal Law No. 60-FZ amended Federal Law on Protection of Rights of Legal Entities and Individual Entrepreneurs in the Exercise of State Control (Supervision) and Municipal Control, dated December 26, 2008, No. 294-FZ.

Federal Law No. 60-FZ specifies the types of control which do not fall under the effect of Federal Law No. 294-FZ and establishes a new effective date of Federal Law No. 294-FZ: it comes into force not from July 1, 2009 but from May 1, 2009. Some provisions, including those that concern notification of the beginning of certain types of entrepreneurial activity, work of experts and accredited expert organizations retained for conducting inspections will come into force as of July 1, 2009.

Federal Law No. 60-FZ also establishes that the provisions of Federal Law No. 294-FZ on control over the activity of arbitration managers will not apply until December 31, 2009. Besides, the provisions on organization and carrying out of inspections for customs, antitrust, export, migration, licensing, construction, informational and other types of control and supervision, as regards the type, subject, cause, and term of such inspections, will not apply until January 1, 2010. According to Federal Law No. 294-FZ, the procedure for exercising the said types of control may be regulated by special federal laws.

Refinancing Rate

According to the information published by the Central Bank of Russia on April 23, 2009, the refinancing rate of the Bank of Russia is established as 12.5% per annum starting from April 24, 2009. This is the first reduction of the rate during the period from February 4, 2008. The latest rate, effective as of December 1, 2008, was 13% per annum. In this connection the Bank of Russia has revised the interest rates applicable to its operations.

International Treaties

Federal Law of April 9, 2009, No. 55-FZ, has ratified the Protocol to the Convention for the Avoidance of Double Taxation and Prevention of the Evasion of Taxes on Income and Capital between the Government of Russia and the Government of the Czech Republic.

In particular, the Protocol specifies the criteria and grounds for qualifying presence as "permanent representation" and gives clarification of other notions used in the Convention. The

Protocol regulates taxation of the member state's resident's income earned from sale of shares of stock or similar interest in a company over 50% of the assets of which constitute real estate located in the other state. The Convention has been supplemented with certain provisions aimed at enhancing the effectiveness of fiscal information exchange.

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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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