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Newsletter

Review of changes in legislation

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Securities Market

1. By Federal Law No. 264-FZ, dd. October 2010 ("FZ No.264"), the packaged changes to Federal Law on the Securities Market, No. 39-FZ, dd. April 22, 1996 (the "SM Law"); Federal Law on Joint-Stock Companies, No. 208-FZ, dd. December 26, 1995; Federal Law on the Protection of the Rights and Legitimate Interests of Investors in the Securities Market, No. 46-FZ, dd. March 5, 1999; Federal Law on Investment Funds, No. 156-FZ, dd. November 29, 2001; and the Code of Administrative Offenses, have been enacted.

Specifically, the following terms used only for the purpose of disclosure and (or) submission of information under the SM Law have been introduced and defined: "controlling person", "controlled person (controlled organization)".

Controlling person is a person entitled to dispose of, directly or indirectly (acting through persons controlled by it), over 50% of votes in the governing management body of the controlled organization or entitled to appoint (elect) the individual executive body and (or) over 50% of members of the collegial management body of the controlled organization by virtue of participation in the controlled organization and (or) on the ground of agreements specified in the Law. Controlled person (controlled organization) is a legal entity being under a direct or indirect control of the controlling person.

Due to the introduction of the term "controlling person", the contents of the information about the issuer's participants (shareholders) and interested-party transactions made by the issuer have been changed.

The requirements to the contents of the offering memorandum have been changed. For example, information required to be disclosed in the offering memorandum now includes information about organizations controlled by the issuer, if each of such organizations accounts for at least 5% of the consolidated value of assets or at least 5% of the consolidated income, as reported in the issuer's most recent consolidated accounts (consolidated financial statements), and about other organizations controlled by the issuer, that, in its opinion, have a significant influence on the financial situation, financial performance, and changes in the financial situation of the group of organizations to which the issuer and the persons controlled by it belong.

The list of persons bearing liability for losses incurred by investors and (or) owners of securities because of unreliable, incomplete and (or) misleading information in the offering memorandum has been expanded, and the running of the limitation period for relevant claims has been changed.

Provisions of the SM Law on the disclosure and submission of information have been considerably modified; now, the Federal Service for Financial Markets (the "FSFM") relieves the issuer from the obligation to disclose or submit information about securities on certain

conditions. The procedure for disclosure and submission of information about an issue (additional issue) of securities has been modified; provisions on the conditions of placement of issued securities and a report (notification) on the results of the securities issue (additional issue) have been amended.

2. By Order of the FSFM, dd. August 12, 2010, No. 10-55/pz-n, new Regulations on the FSFM has been approved. The Regulations establish rules for performance by the FSFM of its functions and the exercise of its powers.

Tax Regulation

On October 7, 2010, a Protocol of Amendment of the Double Taxation Treaty between the RF Government and the Government of the Republic of Cyprus concerning the income tax and the tax on capital (the "Treaty") was signed.

In particular, the criterion for determination of a resident's place of management has been defined: where the effective place of management of a person other than a natural person cannot be determined, competent Russian and Cypriot authorities will by mutual agreement determine the place of effective management on a case-by-case basis.

The Treaty has been supplemented with provisions on permanent representation, provisions to the effect that Article 6 of the Treaty concerning income from real estate is also applicable to income received through real estate trusts, real estate unit trusts or similar forms of collective investment created primarily for investment in real estate.

The method of assessment of taxes on income from international transportation has been changed; more specific have become the provisions on taxation of dividends (in particular, a more exact definition has been given to the term "dividends", the term "share" has been expanded: from now on it also includes depositary receipts) and interest (the definition of the term "interest" has been made more specific).

Besides, new provisions on taxation of income from the disposal of property have been introduced. Thus, income of a resident of one state from the disposal of shares and similar rights, over 50% of the value of which is represented by real estate located in the other state, may be liable for taxes in such other state. Provided that such income does not include income from the disposal of shares in the course of reorganization of a company and income from the disposal of shares listed on a stock exchange. Other exclusions have also been provided for.

The provisions of the Treaty concerning the exchange of information between competent authorities of Russia and Cyprus, mutual agreement procedures, and procedures for government assistance in tax collection and limitation of privileges have been amended.

For instance, it is established that competent authorities of Russia and Cyprus will exchange information that may be deemed relevant to the performance of the Treaty or to the administration and application of internal tax laws and regulations, to the extent that taxation stipulated by Russian and Cypriot laws and regulations is not in conflict with the Treaty. Any information received by Russia or Cyprus will be deemed a secret and may be disclosed only to authorized persons or bodies. They may disclose such information only in an open court hearing or where a court takes relevant decisions.

The amendments should not be construed as obligating Russia or Cyprus to take administrative measures that would contradict the legislation or administrative practices of one of the states; provide information that may not be received by the law or in the course of normal administrative practices; provide information that would disclose any trade, business, industrial, commercial, or professional secret or trade procedure, or information the disclosure of which would be contrary to the public policy.

Besides, where one of the states makes a request for information, the other state will use opportunities available to it to collect the requested information even though such other state does not need such information for its own taxation purposes. A refusal to provide information only because such information is in the possession of a bank, some other financial institution, a nominee holder, agent, or trustee or contains data about the property interests of any person, is inadmissible.

It has been specified that Russia and Cyprus will assist each other in the collection of tax liabilities (this term is defined): if tax liability to one of the states is to be collected in accordance with the laws of that state, then upon request of the competent authorities of that state such tax liability will be accepted for collection by the competent authorities of the other state. Such tax liability will be collected by the other state in compliance with its laws and regulations applicable to the collection of its own taxes as though it were tax liability to such other state.

Competent authorities may issue injunctions with respect to tax liabilities to secure their discharge.

It has been stipulated that the tax collection related amendments should not be construed as imposing on Russia or Cyprus any obligation to take steps that would be contrary to the laws or administrative practices of the states; take steps that would be contrary to the public policy (*ordre public*); render assistance whilst the other state has not taken all reasonable measures in the case at hand to collect or ensure collection of the taxes, which it could have taken in accordance with its laws or administrative practices; give assistance where administration expenses to be incurred by that state are manifestly disproportionate to the benefits which the other state may receive as a consequence of this.

Bankruptcy

1. Governmental Decree No. 851, dd. October 20, 2010, enacted the Rules on settling of accounts for the purpose of satisfaction by the debtor's founders (participants), by the owner of the debtor's property (where the debtor is a unitary enterprise), and (or) by a third party of claims to the debtor to make mandatory payments in the course of bankruptcy proceedings.

Within 3 business days of receipt of a letter of intent to satisfy in full the claims to the debtor, the competent authority should file with an arbitration court a relevant notification. The signatory to the letter of intent transfers money in the amount specified in the arbitration court's ruling granting consent with reference to the letter of intent.

No later than the next business day after the date of receipt of the arbitration court's ruling to recognize the claims to the debtor as satisfied and substitute the creditor in the register of creditors' claims or the arbitration court's ruling to deny recognition of the claims to the debtor as satisfied and substitution of the creditor, the competent authority should send copies of the said arbitration court's rulings to the budget revenue administrators.

2. Under the Federal Law on Insolvency (Bankruptcy), the Ministry of Economic Development (the “MED”) passed Order No. 284 of, dd. July 8, 2010, that enacts the Procedure for Keeping the Consolidated State Register of Self-Regulating Organizations of Court-Appointed Managers (the “Register”), specifying the procedure for recording in the Register of information about a non-profit organization, procedures for keeping the Register by a competent authority, procedures for provision of information recorded in the Register.

Besides, the Order contains the list of information to be recorded in the Register, specifies the form of an excerpt from the Register. It also determines the Procedure for posting of information contained in the Register on the official Web site of the Federal Service of State Registration, Land Register and Mapping, according to which all information included in the Register is subject to posting on the Web site, except for the personal data of court-appointed managers and other specified persons.

Real Estate

1. Pursuant to Federal Law on State Registration of Rights to and Transactions with Real Estate, No. 122-FZ, dd. July 21, 1997, the RF Ministry of Economic Development issued Order No. 180, dd. May 14, 2010, (the “MED Order No. 180”) that enacts the Procedure for provision of information contained in the Consolidated State Register of Rights to and Transactions with Real Estate (the “EGRP”).

The said Procedure sets forth: the form and contents of a request for the above-referenced information; the form of excerpts from the EGRP; the list of documents to be enclosed to a request; procedures for sending of excerpts from the EGRP, requests for information, decisions about denial to provide the requested information, notices of non-availability of requested information; procedures for provision of information contained in the EGRP by way of granting of access to the information resource that contains the EGRP data; deadlines for provision of information contained in the EGRP depending on the method by which it is provided, etc.

2. MED Order No. 180, dd. May 14, 2010, introduces the following changes: the rule whereunder a request for provision of information from the EGRP must be submitted in a mandatory written (paper) form only, remains effective until January 1, 2011, but not until November 1, 2010.

3. MED Order No. 343, dd. July 30, 2010, establishes the Procedure for collection and return of the fees for provision of information recorded in the State Cadastre of Real Estate and specifies the amounts of fees payable for provision of such information by the Federal Service of State Registration, Land Register and Mapping.

Licensing

Federal Law No. 269-FZ, dd. October 4, 2010, amends Federal Law on Licensing of Certain Types of Activity, No. 128-FZ, dd. August 8, 2001 (the “Licensing Law”).

Now, among the grounds for denial of a license for duplication of audiovisual works, computer software, databases and sound records on any media (except where such activity is independently carried out by persons holding rights to use the said objects of copyright and neighboring rights by virtue of a federal law or a contract) is the cancellation of the license issued before.

License requirements and conditions which the licensee must meet to be able to obtain a license for the above activity have been specified, in particular, the requirement that such activity should be carried out using equipment owned by the licensee.

Court Practice – Antitrust Laws

On October 14, 2010, the Plenum of the Supreme Arbitration Court passed Resolution No. 52 on Amendment of Resolution No. 30 of the Supreme Arbitration Court Plenum on Certain Issues Arising in Connection with Application by Arbitration Courts of Antitrust Laws, dd. July 30, 2008.

Resolution No. 52 adds to the earlier Resolution the following provisions:

- The absence of a violation of law by a specific business entity in the form of concerted actions may be confirmed, inter alia, by the evidence of the existence of objective causes for such business entity's own conduct in the commodities market and (or) lack of dependence of its actions on the actions of other persons;
- In the event the anti-monopoly authority has determined the price which, in its opinion, is a fair price of a certain commodity, such price may not be recognized as obligatory for application by specific business entities, but is a recommended price; the SAC Plenum has clarified in this regard that courts should understand that application by a business entity of prices recommended by the anti-monopoly authority may in no event be recognized as a breach of antitrust laws.

Excluded has been the clause with clarifications regarding "vertical" agreements, i.e., agreements between business entities that do not compete with each other, one of which purchases or is a prospective purchaser of the goods and the other provides or is a prospective seller of the goods.

The clause that clarified the anti-monopoly authority's rights to issue orders to remit to the federal budget income received as a result of a breach of antitrust laws, has also been excluded.

The SAC Plenum's Resolution No. 52 also contains new clarifications with regard to the application of the provisions of the Code of Administrative Offenses. In particular, it is specified that courts should proceed from the premise that once the anti-monopoly authority's full-fledged resolution has been produced, the anti-monopoly authority may initiate administrative proceedings irrespective of whether the resolution has been appealed from through a court or not.

Clarifications have been given with regard to the procedures for a voluntary notification of the anti-monopoly authority about entering into an agreement that is inadmissible under antitrust laws or about involvement in concerted actions. For instance, the condition that such notification should be given before the anti-monopoly authority has in its possession the

respective information or documents, is deemed met if the notification was given prior to the announcement of the anti-monopoly authority's decision establishing the fact of violation of antitrust laws.

Intellectual Property

On October 21, 2010, Informative Letter of the Federal Service for Intellectual Property, Patents and Trademarks (Rospatent) on the Application of the Singapore Treaty Provisions in the Russian Federation, No. 2, dd. April 21, 2010, was posted on Rospatent's official Web site.

The Singapore Treaty on the Law of Trademarks, dd. March 27, 2006 (the "Singapore Treaty"), was ratified by the Russian Federation on May 23, 2009 by the enactment of a relevant federal law and is intended to simplify and harmonize the procedural rules of the national trademark laws of the Singapore Treaty countries (trademark registration procedures), in particular, through a reduction of the volume of documents and information required to be submitted to the patent office, and through application in certain cases of a notification procedure.

The Singapore Treaty, being an international treaty, is recognized by the RF Constitution as a structural element of the Russian system of law, therefore its provisions should equally apply to Russian and foreign trademark owners. However, according to the information received from Rospatent, in practice it will apply simplified procedures under the Singapore Treaty only to non-resident trademark owners, while Russian trademark owners will be required to submit for the registration purpose the same set of documents and information as they were previously required to submit under the national legislation. It may be assumed though that such approach, resulting in an unequal treatment of trademark owners, will soon be corrected in the course of contestation by trademark owners of respective Rospatent's decisions.

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