

Currency laws

On February 13, 2013, there came into force the amended Article 15.25(1) of the Code of Administrative Offences of the Russian Federation stipulating administrative liability for illegal currency operations (Federal Law of November 12, 2012, No. 194-FZ).

The changes were mainly dictated by the need to remove contradictions in the law application practice of currency control bodies and courts, and bring the Code of Administrative Offences (the "CAO") in compliance with the currency laws.

According to the amended Article 15.25(1) of the CAO, currency operations that are expressly forbidden by currency laws or are conducted with violations of such laws are illegal, including:

- a) purchase or sale of foreign currency and foreign currency checks (including traveler's checks) by passing authorized banks;
- b) currency operations and settlements by passing accounts in authorized banks or bank accounts abroad in cases not stipulated by Russian currency laws;
- c) currency operations and settlements with the money in bank accounts (deposits) abroad in cases not stipulated by Russian currency laws.

A fine for such violations is from the three fourths to the entire amount of the illegal currency operation.

The amended article of the CAO might create problems for residents that have bank accounts abroad.

The Federal Law on Currency Regulation and Currency Control (the "Law"), while containing a limited list of grounds for transfer of money to bank accounts of non-residents abroad, does not expressly prohibit the transfer of money to such accounts in other cases. The examples of such operations, although not expressly stipulated by the Law but nevertheless quite widely used in practice, are transfer of dividends, crediting of bank accounts with income from securities or in connection with their sale, receipt of salary by a resident employee from a non-resident employer. The changes in the CAO give ground for regarding any use of such and other funds transferred to bank accounts abroad in cases not expressly set forth in the Law as an illegal currency operation.

Banks

Federal Law on Amendment of Certain Legislative Acts of the Russian Federation, dated March 14, 2013, No. 29-FZ.

The changes concern the operations of foreign banks in Russia. Now, the branches of foreign banks are excluded from the banking system of Russia. Correspondingly, law provisions requiring a permit for opening branches of foreign banks

in Russia, their state registration and obtainment of a license for bank operations in Russia have ceased to be in effect. Thus, foreign banks may no longer open branches in Russia.

We would like to remind that previously, regardless of the law requirement that branches of foreign banks undergo state registration, the procedure for such registration was never developed. Therefore, the changes actually bring

legislation in accordance with the law application practice that existed at that time.

The Law came into force on March 26, 2013.

State registration of the lease right

Federal Law on Amendment of Certain Legislative Acts of the Russian Federation and Recognition as Lapsed of Certain Provisions of the Legislative Acts of the Russian Federation, dated March 4, 2013, No. 21-FZ.

The uncertainty with respect to the state registration of lease has been removed. By way of a reminder, the recently amended Part 1 of the Civil Code, being aimed at eliminating double registration, revoked as of March 1, 2013 the rules on state registration of contracts concerning real estate, including contracts for real estate lease executed for a term of over one year. However, insofar as the registration of the right of real estate lease was effected by way of registration of the corresponding lease contract, the said changes have practically deprived the Civil Code of a legal ground for registration of the

lease right and gave way to the risk of multiple lease of one and the same real estate. By Federal Law of March 4, 2013, No. 21-FZ the legislator removed the legal uncertainty with respect to contracts for lease of real estate, having excluded such contracts from the list of transactions that are not subject to state registration. Thus, the earlier effective provisions on state registration of lease contracts have been reinstated.

The Law came into force on March 4, 2013, i.e. the day of official publication.

Legal entities. Associations (unions)

Federal Law on Amendment of Part One of the Civil Code of the Russian Federation and the Federal Law on Non-Commercial Organizations, dated February 11, 2013, No. 8-FZ.

The changes concern non-commercial organizations (the “NCO”), such as associations (unions), and introduce a definition of that form of NCO – *a unification of legal entities and (or) individuals based on a voluntary or, in cases established by the law, obligatory membership and created for representation and protection of common, including professional, interests for the attainment of publicly useful and other aims that do not contravene the law and are non-commercial*. The sole constitutive document of an association is its charter. Unlike the earlier effective provision on the members’ secondary liability for the obligations of the association, the new general rule dictates that the members of an association are not liable for its obligations, except where the law or the charter provide for secondary liability. There has been introduced a similar rule that an association is liable for the

obligations of its members exclusively where it is stipulated by the law. A new provision on the minimum number of the members of an association was implemented which says that it should be at least five members. Other requirements to the minimum number of members and the peculiarities of the legal status of an association may be introduced by special laws. The Law determines the specifics of management of an association and specifies the rights and obligations of its members. The constitutive documents of associations set up earlier should be brought in compliance with the new provisions of the Law at the time of their first amendment.

The changes came into force on February 12, 2013, i.e. the day of official publication.

Anti-monopoly laws

On February 26, 2013, the Ministry of Justice registered Order of the Federal Anti-Monopoly Service on Approval of the Procedure for Reconsideration of an Instruction Issued in Cases Stipulated by Article 33 of the Federal Law on Protection of Competition, dated August 24, 2012, No. 544 (the "Order").

The Order was issued in pursuance of Article 33 of the Law on Protection of Competition. Part 11 of the said article provides for the possibility to change the contents and the procedure for execution of an instruction of the Anti-Monopoly Service (i.e., an obligatory act of the anti-monopoly authority issued upon the consideration of a case on violation of anti-monopoly laws or in the carrying out of state control over economic concentration) in case of a change of the product or geographical boundaries of the commodities market, composition of sellers or buyers, loss of the dominant position by market participants.

It has been established that an anti-monopoly authority may reconsider its instruction both

upon an application of the person (group of persons) to which the instruction was issued and which performs actions requiring preliminary approval (notification) of the anti-monopoly authority, and on its own initiative. In any event, a reconsideration of the instruction may not worsen the position of the person to which it was issued.

An application made in writing in a free form is filed with the anti-monopoly authority that issued the instruction. The application should be accompanied by documents confirming the existence of grounds for reconsideration of the instruction. The anti-monopoly authority considers the application within one month and decides whether to satisfy or dismiss it.

Legal procedure

Federal Law on Amendment of Certain Legislative Acts of the Russian Federation, dated March 4, 2013, No. 20-FZ.

Changes have been introduced, inter alia, in the Laws on the Status of Judges in the Russian Federation, Justices of the Peace in the Russian Federation, Bodies of the Judicial Community in the Russian Federation, and in the Code of Civil Procedure.

Now, a justice of the peace has the right to issue the operative part of the judgment only, unless the parties involved request in writing for the reasoned judgment. The procedure for filing such request should be described in the operative part of the judgment. The said request may be filed by any of the parties involved within three days of the announcement of the

operative part if the party (or its representative) was present during the announcement, and within fifteen days if the party (or its representative) was not present. The reasoned judgment should be prepared within fifteen days following the filing of the request.

The chairman of a district court is empowered to redistribute, depending on the case load, part of cases from a justice of the peace of one judicial precinct to a justice of the peace of another precinct within the same judicial district.

The changes in the said laws came into force on April 4, 2013.

Court practice. The public policy reservation

On April 2, 2013, the Supreme Arbitration Court of the Russian Federation (the “SAC”) published on its site Informative Letter of the SAC Presidium with the Overview of the Practice of Consideration by Arbitration Courts of Cases on the Application of the Public Policy Reservation as the Ground for Refusal of Recognition and Enforcement of Foreign Court and Arbitral Decisions, dated February 26, 2013, No. 156 (the “Overview”).

The SAC Presidium has prepared recommendations on one of the most problematic issues in the practice of consideration of cases on enforcement of foreign court and arbitral decisions – the application of the public policy reservation as a ground for refusal of such enforcement.

The Overview offers the following definition of public policy: *“the fundamental legal bases (principles) of supreme imperative and universal nature, special social and public Importance that constitute a foundation for building the economic, political and legal system of the state”*.

In general, the Informative Letter demonstrates the SAC’s efforts to counteract any abuse of the

reservation and unmotivated refusals of enforcement of foreign court and arbitral decisions with reference to public policy. For example, the SAC Presidium indicates that the public policy reservation has an extraordinary nature and may not replace special grounds for refusal of enforcement of foreign court and arbitral decisions. The SAC Presidium notes that the absence in Russian law of an institute similar to that existing in foreign law may not by itself serve as a ground for application of the public policy reservation.

According to the Chairman of the SAC, the Overview is intended to facilitate the formation of *“a predictable legal regime of enforcement of foreign court and arbitral decisions”*.

Court practice. The legal entity’s address

Draft Regulation of the SAC Presidium on Certain Issues of the Practice of Consideration of Disputes Connected with the Authenticity of the Legal Entity’s Address.

The draft Regulation states that the location of a legal entity indicated in its charter is determined on the basis of the name of the locality and (or) municipality. Correspondingly, any change of address within the location of a legal entity recorded in the Consolidated State Register of Legal Entities (the “CSRLE”) does not entail the necessity to make the corresponding changes in its charter.

Besides, the draft Regulation explains what consequences a false address may bring about. For example, it is supposed that a registering authority would have the right to refuse registration of a legal entity (provided the refusal is sufficiently reasoned), if the address indicated in the application for state registration is used by many legal entities, but it is impossible to contact them at that address; if

the said address is the place of location of governmental authorities; if there is a written prohibition of the real estate owner against the use of the real estate as the legal entity’s address. Moreover, as it is said in the Draft Regulation, should it be proved that any communication with the legal entity at the address recorded in the CSRLE is impossible, the registering authority would have the right to send the legal entity and its members a notification of the need to record the change of address in the CSRLE and in the event of their failure to do as directed – to apply to an arbitration court claiming liquidation of the legal entity. If the violation is not remedied before the court issues its decision, the court would have a cause to satisfy the claim for forced liquidation on the basis of a gross violation of the law committed at the time of setting up of

the legal entity or during its activity. The draft Regulation stipulates that the owner of the legal estate or its lawful possessor would also have the right to apply to the court claiming that the legal entity ceases to use the address of the real

estate. In that case the infringed right might be protected in a negatory action, i.e., a claim for remedying the infringement of the owner's (lawful possessor's) right not connected with dispossession.

Lawmaking. Public-private partnership

On March 13, 2013, the Draft Federal Law on the Fundamentals of a Public-Private Partnership in the Russian Federation (the "PPP") was submitted to the State Duma.

The Draft Law is intended to determine the legal basis of the PPP on the federal level. It should be noted that currently the issues of the PPP are regulated by regional laws, which is connected with the risk of controversies between the legal acts of the federal and the regional levels. The Draft Law introduces the uniform definition of the PPP: *"the interaction of a public partner on one side and a private partner on the other side, being done on the basis of a public-private partnership agreement executed upon a tender, and aimed at enhancing the quality and ensuring availability of services rendered to the population, as well as at attracting private investment in the economy"*. The law would not extend to the relationships based on the PPP principles, if financing is done by investment funds.

It is proposed that the Russian Federation, its constituents, local self-government authorities represented by authorized bodies, state-owned companies, state-owned corporations, unitary enterprises, institutions, economic unions with 100% state or municipal participation may act as a public partner in the PPP. Individual entrepreneurs, Russian and foreign legal entities may act as a private partner.

According to the Draft Law, in order to implement the PPP agreement the public partner must provide to the private partner for possession or use certain property for carrying out its activity and (or) the right to use the

results of intellectual activity and the means of individualization. In its turn, the private partner assumes the obligation to finance in full or in part and operate and (or) carry out maintenance of the object of the agreement, including development and coordination of project documentation, creation or reconstruction of the PPP object.

The Draft Law provides for the guarantees of rights and lawful interests of private partners, among which is the right to amend the PPP agreement in the manner prescribed thereby in the event of material amendment of the law which deteriorates the private partner's position; the possibility to enter into a tripartite agreement involving a creditor invited by the private partner; the right to recover losses caused by the illegal actions (inaction) of the public partner.

Concurrently with the Draft Law on the PPP, it is proposed to amend the Tax Code and the Land Code, laws on placement of orders for supply of products, performance of work and rendering of services for governmental and municipal needs and laws on protection of competition. For example, lease of land plots to the PPP without tenders and preliminary approval of real estate location. General recording of operations subject to taxation in the PPP. The PPP under a franchise agreement would not be subject to the law on placement of orders for governmental and municipal needs.

On March 26, 2013, the draft Federal Law on the Code of Administrative Procedure of the Russian Federation (the "CAP") and the Federal Law on Enactment of the Code of Administrative Procedure of the Russian Federation were submitted to the State Duma.

The legislative initiative belongs to the RF President. As follows from the explanatory notes to the draft laws, the proposal to adopt the CAP was dictated by the specifics of cases arising out of public legal relationships in which the parties are not equal.

It is proposed that the CAP would extend to cases arising out of administrative and public legal relationships, cases on protection of violated rights and freedoms of individuals and organizations, including where obstacles to the exercise of their rights have been created or any obligation has been unlawfully imposed on them, as well as cases connected with obligatory judicial control over legality and validity of the exercise of governmental or other public powers.

At the same time it is proposed that the CAP would not extend to cases arising out of public legal relationships referred by the federal law to the competence of the Constitutional Court, constitutional courts of the RF constituents, arbitration courts, cases on administrative offences and some others.

The proposed CAP introduces new terms, such as the administrative case, administrative statement of claim, administrative plaintiff, administrative defendant, administrative procedural legal personality, etc.

Also proposed is a new institute of obligatory participation of the plaintiff's representative in a

number of complicated cases, such as contestation of regulations or forced hospitalization into a psychiatric clinic. In certain cases legal assistance should be rendered free of charge.

According to the proposed CAP, a court would have the right to require presentation of evidence and go beyond the grounds and arguments of the claims. For example, in administrative proceedings the appellate court would not be bound by the grounds and arguments stated in the appeal paper and in the objections, and would be empowered to accept new evidence, reverse the court decision and remit the case to the first instance for reconsideration. In general, under the draft CAP, a court is given wider powers to control the proceedings and the exercise of subjective procedural rights by the parties involved.

Certain cases are proposed to be considered in a summary procedure, i.e., on the basis of submitted written evidence without a hearing. Certain procedural time terms would be reduced, including due to the parties' right to submit documents in electronic form and participate in the process by way of video conference communication.

According to the Draft Law on Enactment, the CAP would come into force on January 1, 2014.

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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



Znamenka 13, bldg. 3, 3rd floor, Moscow, 119019, Russia.
Tel.: +7 (495) 933-75-67, 691-98-13 Fax: +7 (495) 697-92-26.
E-mail: office@agp.ru. Internet: <http://www.agp.ru>.