



Newsletter

Overview of changes in legislation

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Foreign Employees

1. Federal Law “On Amendment of the Federal Law “On Migration Registration of Foreign Citizens and Stateless persons in the Russian Federation” and Some Legal Acts of the Russian Federation” dd. March 20, 2011, No. 42-FZ, provides longer timelines for mandatory registration with migration authorities and clarifies some issues regarding the migration registration of foreign employees.

The place of stay of a foreign citizen or stateless person is, according to the Law, premises or an institution or organization where such individual stays and obtains migration registration. The host party is either a person at whose address a foreigner lives or by whom he/she is employed. A high-skilled foreign specialist who owns residential premises in Russia may act as the host party for his/her family members. A Russian visa for family members is granted on the basis of a letter of invitation issued by a local office of the Federal Migration Service of Russia upon request of such specialist.

The timelines for obtainment of migration registration at the place of stay of a foreigner temporarily staying in Russia, for permitted stay of foreigners in Russia without registration and for the host party's giving notice of arrival of the identified person to a migration authority have been prolonged to 7 days (previously each of such timelines was 3 days).

2. Order No. 424 of the Federal Migration Service, dd. November 29, 2010 “On Amendment of the Order of the Federal Migration Service of Russia dd. November 8, No. 430” sets forth the procedures for issuance, preparation, renewal, restoration and cancellation of visas for foreigners and apatrides by the Federal Migration Service of Russia.

In the event of preparation, renewal or restoration of a visa for a foreign citizen temporarily staying in Russian, a fee is charged in accordance with the RF Tax Code. In certain cases defined by the Order a fee exemption is granted. The visa preparation period is reduced to 20 calendar days. For the purpose of visa preparation it is necessary to submit a migration card and a copy thereof (not required earlier).

The Order sets forth the procedures for issuance and cancellation of visas for foreign high-skilled specialists. For example, if a specialist has come to Russia under an ordinary business visa for the purposes of negotiations with the employer and entry into an employment agreement or a civil-law agreement, then after entry into such agreement that visa will be cancelled and at the same time he/she will be granted an ordinary employment visa for the term of the signed agreement. Information on such specialists is posted on the website of the federal Migration Service.

The Order was registered with the RF Ministry of Justice on February 25, 2011.

3. Resolution of the RF Government “On Amendment of the Regulations of Visa Form, Procedures for and Terms of Visa Preparation, Issuance, Renewal, Restoration in the Event of Loss and Cancellation of Visas” dated March 1, 2011, No. 132, establishes that family members of a high-skilled specialist should be granted ordinary employment visas for the same term as the specialist’s visa. In the event of renewal of the term of the specialist’s visa, the visas granted to his/her family members are renewed too.

Bookkeeping. IFRS

Resolution of the RF Government “On Approval of the Regulations with respect to Recognition of the International Financial Reporting Standards and the Explanations of the International Financial Reporting Standards for Application in the Territory of the Russian Federation” dd. February 25, 2011, No. 107, describes how the IFRS should be applied in Russian and provides explanations of the IFRS Foundation.

The Ministry of Finance of Russia ensures that a Russian translation of each IFRS document should be received from the Foundation. It is required that such translation should be fit for bookkeeping purposes. A decision to enact an IFRS documents is taken with regard to the whole document. If some provisions of an IFRS document are inapplicable in Russia, it is enacted with deletion of such provisions.

Enactment of a recognized document is carried out in two stages: voluntary application stage and mandatory application stage. Expert assessment of applicability of an IFRS document is performed by a special expert authority. Documents are submitted for expert assessment by the Ministry of Finance of Russia. The period for completion of expert assessment is 40 business days. The findings should be set forth in a report. A decision to enact an IFRS document is taken by the Ministry of Finance of Russia subject to approval by the Federal Service for Financial Markets of Russia and the Central bank of Russia, based on the expert authority’s report.

Competition

Federal Law “On Amendments to Article 5 of the Federal Law “On Science and National Science and Technology Policy” and Article 17.1 of the federal Law “On protection of Competition” dd. March 1, 2011, No. 22-FZ, provides that state (municipal) institutions of higher education and scientific institutions may establish their business entities. The purpose is practical application (implementation) of intellectual effort results (computer programs, databases, useful models, industrial prototypes, selection achievements, topologies of integrated microcircuits, know-how). Use rights thereto are contributed to the charter capital of such business entities.

The amendments allow institutions of higher education and scientific institutions to lease out their property without holding tenders or auctions. Terms and procedure for entry into such lease agreements are determined by the RF Government. Business entities may not sublease any property or transfer their rights or obligations to others or make any property available for uncompensated use by others. Leasehold rights may not be pledged.

Government Services

Order of the RF Government of March 17, 2011, No. 442-r, establishes that from July 1, 2011 authorities providing government (municipal) services may not request that applicants submit documents or information kept in files of other authorities or organizations. Further, applicants are not required to apply to other authorities or organizations for approvals or other actions that may be necessary for obtainment of the said services.

The Order approves a list of documents (information) to be exchanged by and between authorities and organizations electronically in connection with the performance of government services and sets the timelines for implementation of relevant electronic services for information exchange. Electronic services will start working in December 2011.

Mediation

Order of the RF Ministry for Education and Science “On Approval of the Mediator Training Program” dd. February 14, 2011, No. 187, approves the mediator training program. It is a supplementary educational program for professional retraining which is provided on an – on-site basis only and includes 3 training course: basic, mediation application specifics and training of instructors for mediators. Upon completion of each course a trainee takes an examination and, if he passes it, receives a certificate of re-education.

Provisional curriculum and topics for each training course have been published. Individuals who have completed the basic course may provide professional mediation services with no right to provide instruction in mediation. Individuals who have completed the course for instructors may provide instruction in the basic mediation. The course for instructors should be completed no later than 5 years after successful completion of the basic course.

The Order was registered with the RF Ministry of Justice on March 1, 2011.

Refinancing Rate of the Central Bank of Russia

According to the Instruction of the Central bank of Russia “On Refinancing rate of the bank of Russia” dd. February 25, 2011, No. 2583-U, effective as of February 28, 2011 the refinancing rate of the Central Bank of Russia has been increased from 7.75% to 8% per annum.

Court Practice. Pledge

Resolution of the Plenum of the Supreme Arbitration Court of Russia “On Certain Issues relating to Application of Pledge Legislation” dd. February 17, 2011, No. 11, has been promulgated.

The “General Provisions” section provides explanations regarding the satisfaction of pledgeholder’s claims from pledged property without recourse to a court (extrajudicial procedure), which generally may only be carried out on the basis of an agreement between the pledgor and the pledgeholder. It is also explained in which cases the extrajudicial procedure may not be applied (exclusive court procedure) what are the consequences of entry into an extrajudicial procedure agreement in case where such procedure is not allowed. The section discusses in detail the application of the provision regarding levy execution on the pledged

property only by a court order where the entry into the pledge agreement required consent or approval.

The Resolution also discusses issues concerning the procedure for entry into an agreement on extrajudicial levy of execution on pledged property and the state registration thereof required in certain cases. Described are legal consequences of extrajudicial levy of execution where such right was not provided for (in particular, it is pointed out that apart from the pledgor's right to bring an action in replevin, the pledgor has the right to claim damages caused to it, including the value of the pledged property).

Separately described are the cases where notary's certification of the pledgor's consent to the extrajudicial levy of execution on its pledged property is required and issues concerning the challenging of such consent. Issues concerning the challenging of an agreement on extrajudicial levy of execution on pledged property are discussed. Issues concerning the making of a claim to levy execution on pledged property and to perform an obligation secured by the pledge as well as related procedural issues are described in more detail.

The Resolution clarifies mortgage issues, in particular continuance of encumbrance in the event of division, consolidation, re-parceling or parceling out of land lots. It also discusses assignment of a claim under an obligation secured by mortgage, change of size or term of performance of an obligation secured by pledge, in particular, volume of a secured obligation under a loan where the pledge agreement lacks provisions on the interest rate or procedure for payment of loan interest.

Specific sections of the Resolution are focused on levy of execution on pledged property and sale of pledged property.

Court Practice. Bankruptcy

Resolution of the Plenum of the Supreme Arbitration Court of Russia dd. February 17, 2011, No. 9, "On Supplement to the Resolution of Plenum of the Supreme Arbitration Court of Russia of July 23, 2009, No. 60 "On Certain Issues Connected with Adoption of the Federal Law of December 30, 2008, No. 296-FZ "On Amendment of the Federal Law "On Insolvency (Bankruptcy)" has been promulgated.

According to the Resolution, an arbitration manager acts as a professional private practitioner and is no longer required to register as an entrepreneur. Any disputes relating to professional activities of an arbitration manager should be resolved by an arbitration court. The Resolution explains that claims for imposition of administrative liability on an arbitration manager who fails to perform his duties and for reimbursement by him of damages caused to debtor, creditor and other parties remain within the jurisdiction of courts after January 1, 2011. It is of no relevance whether or not an arbitration manager has been registered as an entrepreneur.

Court Practice. Arbitration Proceedings

Resolution of the Plenum of the Supreme Arbitration Court of Russia dd. February 17, 2011, No. 12, "On Certain Issues Relating to Application of the Code of Arbitration Procedure of the Russian Federation as amended by the Federal Law of July 27, 2010, No. 228-FZ "On

Amendments to the Code of Arbitration Procedure of the Russian Federation” has been promulgated.

Amendments to the RF Code of Arbitration Procedure aimed at optimization of work of arbitration courts are effective since November 1, 2010. In this regard the RF Supreme Arbitration Court has issued clarifications regarding the application of the amendments and, in particular, regarding submission of documents to a court electronically, documents confirming the location of parties involved in proceedings, court notices, audio recording and issuance of a memorandum of court proceedings, conduct of court proceedings using videoconference technologies.

The Resolution explains that the procedure for submission of documents to a court electronically is to be approved by an order of the RF Supreme Arbitration Court; when deciding to accept a submission, a court should ascertain that the submission is made in compliance with formal requirements of the Code of Arbitration Procedure with regard to form and substance and that a documents submitted electronically has been signed by a certain person (this may be ascertained during a pretrial hearing by comparing the submitted electronic document with its original submitted to the court or on the basis of other documents). Preliminary injunction requests as well as requests to secure pecuniary interests or to suspend the enforcement of court acts may not be submitted electronically. Such documents (even if included in a statement of claim submitted electronically) may only be submitted in the form of a hard copy.

The Resolution describes documents, other than extracts from the Consolidated State Register of Legal Entities (“CSRLE”) or the Consolidated State Register of Individual Entrepreneurs, that are acceptable as evidence of the plaintiff’s or defendant’s location: copies, certified by plaintiff, of pages of a relevant registration authority’s website; a print-out of information from the CSRLE federal database, certified by a person having access to the database. Issues concerning the confirmation of lack of information on a person’s location in CSRLE are clarified. It is pointed out that an evidence tampering statement may be submitted with regard to the said documents. Information may be exchanged between CSRLE and relevant registration authority and court electronically.

Detailed explanations are provided with regard to delivery of court notices and duly given notices; in particular it is explained what document is to be regarded as a court act first received by a party to proceedings; by a person who was involved in the proceedings after initiation thereof; by a non-party to the proceedings who has but challenged a court act. It is also explained what document may be accepted as evidence of delivery/receipt of a notice and what is the procedure for posting information on procedural activities at an official website. Clarifications are provided with regard to use of various means of giving notices, depending on the stage of proceedings and other circumstances.

The Resolution explains in detail the procedure for conduct of court hearings via videoconference. Generally, this is only allowed is a videoconference request has been filed prior to appointment of the hearings and if there are technological facilities for fulfillment of such request. In any event such hearings are held through a competent arbitration court. Explanations are given with respect to the procedures for conduct of such hearings, check of persons’ authority, production of evidence, etc., as well as audio recording and issuance of a memorandum of court proceedings and receipt of a copy of audio record by the parties.

Law Making. Criminal Liability of Legal Entities

The draft Federal Law “On Amendment of Some Legislative Acts of the Russian Federation in Connection with Introduction of the Institution of Criminal Law Pressure with Respect to Legal Entities” has been promulgated.

The draft Law is aimed at establishing a criminal law mechanism to counteract involvement of legal entities in criminal activities. It describes grounds for imposition of criminal liability on legal entities; subjects of liability; criminal law measures; grounds for release of a legal entity from criminal liability, grounds for and term of criminal record of legal entities, and defines the criminal law form of putting criminal law pressure.

Although a legal entity is not regarded as perpetrator of a crime, in the event that a legal entity is involved in a crime committed by an individual it will bear criminal liability. According to the draft Law, involvement in a crime means the commitment of a crime in the interest of a legal entity or the use of a legal entity for the purpose of commitment or concealment of a crime or consequences of a crime. Involvement is in place only if a crime has been committed by a special subject – an individual performing management functions for the legal entity or an individual who carries out actual management (i.e. who does not hold any position in the legal entity and does not act on its behalf under a power of attorney, but who in fact controls the decision making of the legal entity).

The draft provides for liquidation and ban of operations in the Russian Federation as exceptional measures of criminal law pressure with regard to a legal entity. It also grants courts the right to invalidate transactions entered into by a legal entity for the purpose of commitment or concealment of a crime. Provisions of the RF Civil Code regarding invalidity of a void transaction apply to the above-mentioned transactions.

The draft Law provides that procedures for criminal prosecution of legal entities are similar to those applicable to individuals. An accused legal entity will be involved in criminal proceedings as a participant on the part of defense. Rights, duties and legal interests of such participant will be exercised and performed on its behalf by its representative.

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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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