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News Bulletin

02/2007

News of the month:

1.	News of the Month.....	01
2.	Business Regulations.....	02
3.	Banking and Finance.....	02
4.	Securities Regulation.....	03
5.	Taxation.....	03
6.	Licensing.....	04
7.	Customs Law.....	05
8.	Civil Law.....	06
9.	Administrative Law.....	06
10.	Court Practice.....	06
11.	Judicial Practice of the Advocates Bureau	07

This information bulletin is a review of certain legislative developments. Information contained herein is not comprehensive and should not be treated as a legal advice. The readers should seek the advice of advocates and lawyers of Advocates Bureau in case any questions arise.



News of the Month

1. NEWS OF THE MONTH

Amendments to Russian migration law came into force

On January 15, 2007 the Federal Law # 110-FZ of July 18, 2006 (in the version of the Federal Law # 2-FZ of January 06, 2007) came into force. It brought amendments to the Law "On the Legal Status of Foreign Citizens in the Russian Federation" in order to simplify migration procedures and to adjust the mechanism of foreigners' and stateless persons' employment in the Russian Federation. Furthermore, since January 15, 2007 new Rules for granting temporary work permits are to be applied.

The Resolution # 9 of the Government of the Russian Federation of 15 January, 2007 # 9 "On the Procedure of Migration Registration of Foreign Citizens and Stateless Persons in the Russian Federation" approved the Rules on the procedure of migration registration of foreign citizens and stateless persons in Russia regulating the registration process of the indicated persons at the place of permanent or temporary residency. The Resolution came into force on the day of its official publication.

According to the Resolution # 21 of the Russian Government of the Russian Federation of 17 January, 2007 # 21 "On Approving the Rules on Foreign Citizens and Stateless Persons Presenting Information to Confirm their Residency in the Russian Federation" foreigners (and stateless persons temporarily and permanently living in the Russian Federation are no longer obliged to perform annual re-registration. Instead of this, since January 15, 2007 they have to give note to confirm their residence in the Russian Federation to the territorial organ of the Federal Migration Service in the place where the permit for temporary or permanent residency was issued.

By the Order # 10 of the Federal Migration Service of 16 January, 2007 # 10 "On Approval of Regulations on Controlling Measures by the Territorial Organs of Federal Migration Service concerning the Observance of Migration Rules of the Russian Federation" established the Rules on the procedure of check-ups on business organizations to maintain control and supervision in the sphere of migration. Check-ups will be carried out in companies employing foreigner as well as organizations suspected to possibly break migration law. In case that a violation of migration law is discovered there will be issued a report on infringement of administrative law. At the same time penalties provided by the Code of Administrative Violations of the Russian Federation for violating migration law were severely toughened.

2. BUSINESS REGULATIONS

- 2.1. December 30, 2006 the Federal Law # 271-FZ "On Retail Markets and Amendments to the Labor Code of the Russian Federation" was passed. Amendments aim at securing consumers' rights, supporting native commodity producer, creating conditions for the sale of agricultural products produced by farming corporations and personal farms, as well as regulating trade at retail markets.

3. BANKING AND FINANCE

- 3.1. The Central Bank of the Russian Federation published Letter #174-T of 28 December, 2006 "On refunding reservation funds and special accounts". Due to the expiry of Article 16 of Federal Law "On the Regulation of Currency and Currency Control" on 01 January, 2007 reservation funds deposited earlier on the accounts of the Bank of Russia for registration of reservation funds on the first working day of 2007 were transferred back to correspondence accounts of representative banks that had deposited reservation funds by order of clients and now are going to return them to the clients.
- 3.2. The Central Bank of the Russian Federation issued Instruction # 1788-U of January 26, 2007 establishing the refinancing rate of the Bank of Russia at 10,5% p.a. from January 29, 2007.
- 3.3. The Central Bank of Russia published Instruction # 1790-U of January 26, 2007 "On the Recognizing Ineffective Parts of the Central Bank's Regulation # 437 of April 23, 1997 "On the Registration Specifics of Credit Organizations with Foreign Investment and on the Procedure for Granting Prior Permission by the Central Bank to Increasing Original Share Capital by Contributions of Non-residents". This Instruction recognized ineffective Chapter 3 of the mentioned above Regulation. Furthermore, the rule stating that minimum amount of share or stock capital of a newly created affiliate of a foreign credit organization is established by legal act of the Central Bank. At the present minimum amount of share or stock capital of newly created banks is determined legally at the rate of 5 million Euros. The Instruction came into force after its official publication at "The Bank of Russia's Bulletin".

4. SECURITIES REGULATION

- 4.1. Federal Securities Market Service issued the order # 06-148/pz-n of December 14, 2006 "On the Amendments to the Regulation on Providing Information by Issuers of Emissive Securities Confirmed by Order # 06-117/pz-n of the Federal Securities Market Service of October 10, 2006". According to the amendments, simultaneous registration of securities' prospectus and state registration of additional securities' emission will be possible. It was also stated that a securities' prospectus applies to all securities of this additional emission as well as all securities of the main emission.
- 4.2. The Federal Law # 282-FZ of December 30, 2006 "On Amendments to the Federal Law "On the Securities' Market" was adopted. By the Law a new emission security – the Russian depository receipt – is introduced. This is a registered certificate without nominal value. Russian depository receipt states the right of property on certain amounts of shares and bonds of a foreign issuer. Also a new article 27.5-3 regulating the peculiarity of emission and circulation of Russian depository receipts was included into the Federal Law "On the Securities' Market".

5. TAXATION

- 5.1. The Federal Tax Service issued Order # CA3-3-09/826@ of December 01, 2006 "On Approval of Document Forms Used for Tax Registration and Removal from Account of Russian Organizations and Natural Persons". According to the changes introduced to the Tax Code valid from January 01, 2007, a list of documents to be presented to, and handed out by the tax authorities them during the process of tax registration or removal from account of Russian organizations and natural persons is determined.
- 5.2. By the Order # 185n of the Ministry of Finance of the Russian Federation of December 29, 2006 "On Approval of the Tax Declaration Form concerning the Tax on Mining Operations and of the Instruction to Complement of the Form" the declaration form and its completion were corrected in connection with the amendments concerning tax declaration, determination of the taxation basis as well as the calculation and payment of taxes from mining operations that came into force on January 01, 2007. The list of basic reasons for applying a tax rate of 0 percent (rubles) to taxation of natural resources and other specifics of tax payment were completed. The Order comes into force from the moment the tax declaration on the tax on mining operations for January 2007 is due.



- 5.3. The Federal Tax Service of the Russian Federation published Letter # ShT-6-23/35@ of January 24, 2007 "On Presentation of Tax Declarations" which contains letter # 03-02-7/2-125 of the Ministry of Finance of the Russian Federation of December 28, 2006. In particular, it is reported that the Federal Law # 268-FZ of December 30, 2006 "On Amendments to the First and Second Part of the Tax Code of the Russian Federation and Other Acts of Law of the Russian Federation" establishes the duty of large tax payers and organizations with a certain number of workers to present their tax declarations (statements of account) in electronic form from 01 January, 2008.

6. LICENSING

- 6.1. The Russian Government issued Resolution # 30 of January 22, 2007 "On the Licensing of Medical Service" defining the procedure of licensing of medical service performed by legal entities and individual entrepreneurs in the Russian Federation. The licensing of medical service is carried out by the Federal Service for the Supervision of Public Health and Social Development. A license is granted for a 5-year period. Licensing requirements and conditions for performing medical service were extended.
- 6.2. The Resolution # 32 of the Government of the Russian Federation of January 22, 2007 "On Approving the Resolution on Licensing of Technical Maintenance of Medical Equipment (except for cases when this activity is carried out for the needs of the legal entity or the individual entrepreneur)" was published. It sets up the procedure licensing of technical maintenance of medical equipment organized by legal entities and individual entrepreneurs. Licenses are granted by the Health Service "RosZdravNadzor" for a 5-year period. License validity may be extended in accordance with the procedure for license re-registration.
- 6.3. The Resolution # 33 of the Government of the Russian Federation of January 22, 2007 "On Approving the Resolution on Licensing of Medical Equipment Production" was published. It explains a new procedure for the licensing of medical equipment production. Both industrial and individual production of medical equipment are subject to licensing. Licenses are handed out by the Federal Services for the Supervision of Public Health and Social Development. Licenses are granted only to the production of medical equipment registered in the Russian Federation. The period of validity remains the same – 5 years.

7. CUSTOMS LAW

- 7.1. The Decree # 459-r of Federal Customs Service of the Russian Federation of December 20, 2006 "On Classification of Certain Goods according to the Commodity Nomenclature on Foreign Trade Activity in Russia" was published. By the Decree a new volume of decisions and explanations of the Federal Customs Service concerning the classification of certain goods (particularly, certain food and drinks, children's clothing, orthopedic shoes, some sorts of household appliances, audio and video devices, furniture, vehicles, building materials) was issued. The Decree # 1091-r of the Government Customs Committee of the Russian Federation of November 21, 2001 "On Classification of Certain Goods according to the Commodity Nomenclature on Foreign Trade Activity in Russia" including all amendments and additions was recognized ineffective.
- 7.2. The Federal Law # 280-FZ of December 30, 2006 "On Amendments to the Federal Law "About Special Protective, Anti-dumping and Compensation Measures on Import of Goods" was adopted. It should level Russian legislation on special protective, anti-dumping and compensation measures on import of goods according to the rules and regulations of the WTO.
- 7.3. The Federal Law # 281-FZ of December 30, 2006 "On Special Economic Measures" was passed. This Law establishes the legal basis for taking special economic measures, forms and spheres of application of these measures as well as the procedure of their introduction and repeal. The President of the Russian Federation is empowered to make decisions on the necessity to introduce special economic measures concerning foreign states and (or) foreign organizations and foreign or stateless persons temporarily living in Russia, on the period of validity of these measures and on their repeal. The Federal Law came into force on the day of its official publication.
- 7.4. According to the Order # 26 of the President of the Russian Federation of January 11, 2007 "On the Perfection of Government Regulation of Imports to the Russian Federation and Exports from the Russian Federation of precious metals and precious stones" the export of some kinds of precious stones and metals from Russia in customs procedure of export is carried out without quantitative limitation on the basis of a license granted by the Russian Ministry of Economic Development. Previously the export of mentioned goods was subject to quota limits established by the Government of the Russian Federation. The Order came into force on the day it was signed.

8. CIVIL LAW

- 8.1. The Federal Law # 275-FZ of December 30, 2006 "On the Procedure of Forming and Using of Aimed Capital of Non-commercial Organizations" was adopted. The Law set up the legal basis for regulation of relations in connection with the forming and using of the aimed capital of non-commercial organizations and according control. The Federal Law came into force on the day of its official publication.
- 8.2. The Federal Law # 5-FZ of 26 January 2007 "On Amendments to Article 1062 of the Second Part of the Civil Code of the Russian Federation" was passed. The law creates the legal basis for transactions obliging one party or both to make payments in dependence of changes of prices on goods and securities, exchange rates, per cent rates or other rates calculated on the basis of the mentioned parameters or in dependence of circumstances of which it is not clear are they to occur or not. The amendments relate to the legal defense of demands connected to rated derivative financial instruments. These financial instruments are formally associated with risky deals, and according to the former edition of Article 1062 of the Civil Code demands from such deals were not subject to legal defense.

9. ADMINISTRATIVE LAW

- 9.1. The Ministry of Justice of the Russian Federation on December 14, 2006 issued the Order # 363 "On Approving the Administrative Procedure for the Federal Registration Service Performing the State Function of Issuing Apostilles for Official Documents Being Subject to Presentation Abroad".
- 9.2. The Federal Constitutional Law # 1-FKZ of January 30, 2007 "On Amending Art. 7 and 9 of the Federal Constitutional Law "On the Government of the Russian Federation" was passed. This Law forbids the appointment of persons having citizenship or residence permit of a foreign county to the position of the Prime Minister of the Russian Federation. This prohibition also concerns the positions of the Vice Prime Minister and Federal Ministers.

10. COURT PRACTICE

- 10.1. The Plenum of the Higher Arbitrazh Court of the Russian Federation published Ruling # 66 of December 20, 2006 "On some Questions concerning the Application by Courts of Regulations

on Expert Examinations”. It was noticed that an expert examination can be provided by government experts’ institutions as well as non-government experts’ institutions. The Plenum also drew attention to the circle of persons with the consent of whom an examination is to be ordered, and which facts the courts has to take into consideration when deciding whether or not to order an expert examination.

- 10.2. The Plenum of the Higher Arbitrazh Court of the Russian Federation also published its Ruling # 67 of December 20, 2006 “On some Questions Concerning the Application by Courts of the Regulations on Bankruptcy of Absent Debtors and on Liquidation of Inactive Legal Entities”.
- 10.3. The Constitutional Court of the Russian Federation published Ruling # 1-P of January 23, 2007 „On the Constitutionality of Article 779 p. 1 and Article 781 p. 1 of the Civil Code of the Russian Federation in connection with the case of the Agency for Corporate Security Ltd. vs. Mr. V.V. Makeev“. The Constitutional Court adjudged that the parties of a contract on provision of legal services on the basis of the dispositive character of civil law regulations have the right to determine freely the optimal conditions for payment of services provided. However, payment cannot be dependent on a certain court decision that is yet to be taken
- 10.4. The Presidium of the Higher Arbitrazh Court of the Russian Federation by making its decision of 14.02.2007 set a precedent that possibly will effect considerable changes in fiscal practice on VAT refunds. Regardless of the tax authorities’ claims the court refused to reopen a case that had been decided in favor of the taxpayer in 1993 due to newly discovered circumstances. At the same time the court adjudged that the Russian exporters’ right to VAT refund does not depend on the conscientiousness of their foreign contracting party. The Presidium of the Higher Arbitrazh Court of the Russian Federation stated also that foreign companies’ tax problems cannot be taken as proof of the Russian taxpayer’s carelessness. Letters received from abroad by the tax authorities from the position of process law do not rank among extraordinary circumstances that justify the reopening of a case.

11. JUDICIAL PRACTICE OF THE ADVOCATES BUREAU

- 11.1. The Plaintiff sued the Defendant for outstanding wages amounting to 7,500.00 Euro monthly, all in all 5,275,100.22 rubles alleging a labor contract from 21.02.2005 according to which she had worked as a HR counselor for the company from 02.02.2005 to 01.10.2006.

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The attorneys and associates of Advocates Bureau "Piksin and Partner" representing the Defendant denied the Plaintiff's claim stating that the Plaintiff had not worked for the company, that wages had not been paid and that there had not been a labor contract with the Plaintiff. The Defendant's representatives also doubted the authenticity of the contract presented by the Plaintiff whereupon the court ordered an expert examination of the contract from 21.02.2005.

By court decision of 20.09.2006 which came into effect recently the case was dismissed. At present a complaint concerning the Plaintiff's actions of making the labor contract and presenting it to the court aiming to receive an amount of 5,275,100.22 rubles from the company is being prepared.

Details of the case are to be found at the Advocates Bureau's homepage in section "About Us" and subsection "Judicial Practice".