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News Bulletin

03/2007

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News of the month

In March 2007, the Advocates' Bureau "Piksin and Partner" celebrated its third anniversary. An interview of Managing Partner and attorney-at-law, Mr. Nikolay Piksin, on the results of the bureau's work and its practice areas is to be found in issue 3/2007 of the legal journal "Kollegia".

1. NEWS OF THE MONTH

- 1.1. On March 03, 2007, the Federal Law # 26-FZ "On the ratification of the Readmission Agreement between the Russian Federation and the European Union" was passed. The Agreement is directed on supporting cooperation between Russia and the European Union in the field of counteraction to illegal migration and creation of effective procedures on exposure and return of people not meeting the requirements regulating entry, stay or residency on the territories of the Russian Federation and the member countries of the European Union.
- 1.2. The Federal Law # 30-FZ of March 07, 2007 "On the ratification of the Agreement between the Russian Federation and the European Union on the Facilitation of the Issuance of Visas to the Citizens of the Russian Federation and the European Union" was adopted. The agreement establishes a simplified procedure of visa distribution (on direct inquiry of host organizations without submission of invitations) for separate categories of citizens on the basis of reciprocity. The Agreement also regulates matters of registration of multiple visas valid from one to five years, unifies visa fees, and clearly determines procedures and terms of visa issuing.

2. **BANKING AND FINANCE**

- 2.1. The Letter of the Central Bank of the Russian Federation # 18-T of February 19, 2007 "On the reception of collection letters issued by the territorial institutions of the Federal Service of Officers of Justice" was published. Banks operating the accounts of debtors accept collection letters concerning the payoff of funds without a stamp of the bank-issuer from officers of justice carrying out compulsory execution of court acts and other sovereign acts according to the legislation.
- 2.2. The Direction of Central Bank of the Russian Federation # 1794-U of February 21, 2007 "On Amendments to the Instruction of the Bank of Russia # 109-I of January 14, 2004 "On the Bank of Russia's Procedure of Governmental Registering of Credit Organizations and Issuing Licenses on Banking Operations" was published. In particular, the credit organization's



location may be subject to use by the credit organization not only due to right of ownership or lease, but also due to a sublease contract. The list of intern organization departments a credit organization (or its branch) is allowed to open was extended. The Direction came into force after the expiry of 30 days from its official publication in the "Bank of Russia Bulletin".

- 2.3. The Federal Law #34-FZ of March 13, 2007 "On the Amendment of Article 11 of the Federal Law "On Insurance of Natural Persons' Deposits in Banks of the Russian Federation" and Article 6 of the Federal Law "On Payments of the Bank of Russia to Natural Persons' Deposits in Insolvent Banks not Participating in the System of Obligatory Insurance of Natural Persons' Deposits in Banks of the Russian Federation" was passed. The total sum of the amount insured on the citizens' bank deposits was increased from 190,000 rubles to 400,000 rubles. The insurance compensation is granted in case of withdrawal of a bank's license on banking operations. People can demand compensation of 100% of the deposit sum not exceeding 100,000 rubles and another 90% of the deposit sum exceeding 100 000 rubles, yet maximum 400,000 rubles in total.

3. BUSINESS REGULATIONS

- 3.1. The Government of the Russian Federation published its Decree # 147 of March 10, 2007 "On Approving the Regulations on Using Official Internet Sites for Providing Information on Orders on Supply of Goods and Rendering Services for Government and Municipal Needs and on the Technical, Organizational and Other Demands Securing the Use of the Mentioned Sites".
- 3.2. Furthermore, the Decree of the Government of the Russian Federation # 148 of March 10, 2007 "On Approving the Rules Concerning the Issuing of Permits to Retail Markets Organization" was published. Permission to organize retail markets is granted to legal entities free of charge for a period up to 5 years. In case that the legal entity uses real estate on the supposed market territory on the basis of a lease contract, the permit's period of validity cannot exceed the period of validity of the appropriate lease contract (contracts). The Decree comes into force on April 11, 2007.

4. TAX LAW

- 4.1. According to the Letter of the Department of Tax and Custom-Rate Policy of the Ministry of Finance of the Russian Federation # 03-03-06/2/26 of February 15, 2007, economically

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justified and documentary proved expenses made in connection with organizing sub-departments are considered for the means of profits taxation according to rules of the Tax Code for specific types of expenses and according to the recognition method applied to certain income and expenses. Expenses stated are recognized as such in the account (tax) period they relate to, independently from the date of beginning of the sub-department's actual operation.

- 4.2. The Letter of the Federal Tax Service # GI-6-04/135@ on February 21, 2007 "On the Submission of Information Concerning the Income of Natural Persons Distributed by Organizations and Detached Departments as Tax Agents" was published. It says that Russian organizations as well as permanent representative offices of foreign organizations in the Russian Federation are obliged to annually, but not later than April 1, pass to the tax organ on the place of their registration information concerning the income natural persons received from them during the calendar year and taxes charged and withheld. The Letter explains that the mentioned information is to be presented to the tax organ on the place of tax registration of the head organization either for the organization as whole or separately for the head organization and its departments.

5. ADMINISTRATIVE LAW

- 5.1. The Federal Constitutional Law # 3-FKZ of March 02, 2007 "On Amendments to Article 11 of the Federal Constitutional Law "On the Government of the Russian Federation" was adopted. According to the amendments, members of the Government of the Russian Federation are not allowed to take up a post in executive bodies, tutorial or supervisory boards and other committees of foreign non-commercial non-governmental organizations and their sub-departments working at the territory of the Russian Federation. Teaching, scientific and other artistic activities of Government members may not be funded exclusively by foreign countries, foreign and international organizations, foreign citizens and persons without citizenship. Analogical rules were established by the Federal Law # 24-FZ of March 02, 2007 "On Amendments to Several Acts of Legislation of the Russian Federation Concerning the Specification of Requirements to Persons in Governmental or Municipal Positions and Positions of Governmental or Municipal Service". The mentioned Laws come into force after the expiry of 30 days from their official publication.

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6. MIGRATION LAW

- 6.1. The Decree of the Government of the Russian Federation # 94 of February 14, 2007 "On the Governmental Information System of Migration Account" was published. The system is an interdepartmental automated data base formed on the basis of the central data base for the account of foreign citizens, the automatic accounts of different departments of the Russian Federal Migration Service and other informational systems.
- 6.2. Also, the Decree of the Government of RF #97 of February 17, 2007 "On Confirmation of Cases Allowing Foreigners and Stateless Persons Temporarily Staying (Residing) in the Russian Federation to Work outside the Administrative Subject of the Russian Federation Their Work Permit (Temporary Residence Permit) is Valid for" was published. It regulates under which circumstances the mentioned persons are allowed to work at the territory of a administrative subject of the Russian Federation that did not issue a work permit for them. The Decree came into force on the day of its official publication.

7. LEGAL PRACTICE

- 7.1. The Presidium of the Higher Arbitrazh Court of the Russian Federation published its Ruling #7619/06 of December 19, 2006. The essence of the dispute concerns the question if a tax organ is allowed to call to account a bank that – carrying out a tax-payer's order to transfer tax payments – incorrectly stated the code of budget classification, in the result of which the receipt of the tax payment was delayed. The Presidium of the Higher Arbitrazh Court of the Russian Federation found that in the stated case there is no basis for instituting tax proceedings against the bank. The responsibility stated in article 133 p. 1 of the Tax Code of the Russian Federation applies only to cases of the bank's violating the deadlines stated in article 60 p. 2 of the Tax Code. Therefore, this legal norm cannot be applied to other violations of the payment procedure by the bank, including incorrect indication of the budget classification code.



8. JUDICIAL PRACTICE OF THE ADVOCATES' BUREAU

Concerning refunding of legal expenses for services of a legal counselor:

- 8.1. The Arbitrazh Court of Krasnodar Territory in its decision of November 10, 2006 concerning case # A32-4218/2003-15/125-2004-16/74 sentenced that the Defendant (a municipal enterprise) is to refund the Plaintiff's (a foreign company) legal expenses for legal counseling provided by a lawyer amounting to 1,792,941.78 Rubles. The court stated that the lawyer's services were directly connected with the Plaintiff's representation in the original case (concerning recognition ineffective contracts between the parties). The total sum of expenses is confirmed by the case materials, including the Agreement on Legal Services, acceptance certificates, bank statements, invoices etc. In accordance with Art. 110 of the Arbitrazh Process Code of the Russian Federation, the winning party's legal expenses are to be refunded by the other party. The court paid attention to the fact that due to the Defendant's unjustified demand a lot of third-parties were invited to the court sessions. In the result of their constant absence and necessity of repeated invitation several court sessions had to be suspended. Furthermore, the Defendant's representative presented written statement of defense only at the last court session. In the end the court viewed the Defendant's behavior as attempt to delay court proceedings. Therefore the Plaintiff's legal expenses for legal services of a lawyer are subject to refunding in the stated amount.
- 8.2. The Arbitrazh Court of Moscow Region, deciding case # A41-K1-4658/2006 on March 26, 2007 granted the request of OOO "Aluplast RUS" versus OOO "Pervij Okonnij Zavod" (Krasnodar City) concerning the refunding of legal expenses for the services of a lawyer amounting to 654.309,76 Rubles. The court based its decision on the following facts: Dabei stützte sich das Gericht auf Folgendes: OOO "Aluplast RUS" and the Advocates' Bureau made an Agreement on Legal Services according to which the Advocates Bureau engaged itself to provide legal counselling and court representation to the OOO. Amount of services and costs follow from acceptance certificates, invoices, payment bills etc. The advocates' participation in court sessions was stated in the court minutes. According to Art. 110 p. 2 of the Arbitrazh Process Code of the Russian Federation a reasonable amount of the winning party's legal expenses for services of a lawyer are to be refunded by the other party. The court considered possible refunding of the full amount of the expenses for legal services actually paid due to the character of the dispute and the Defendant's behavior.

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