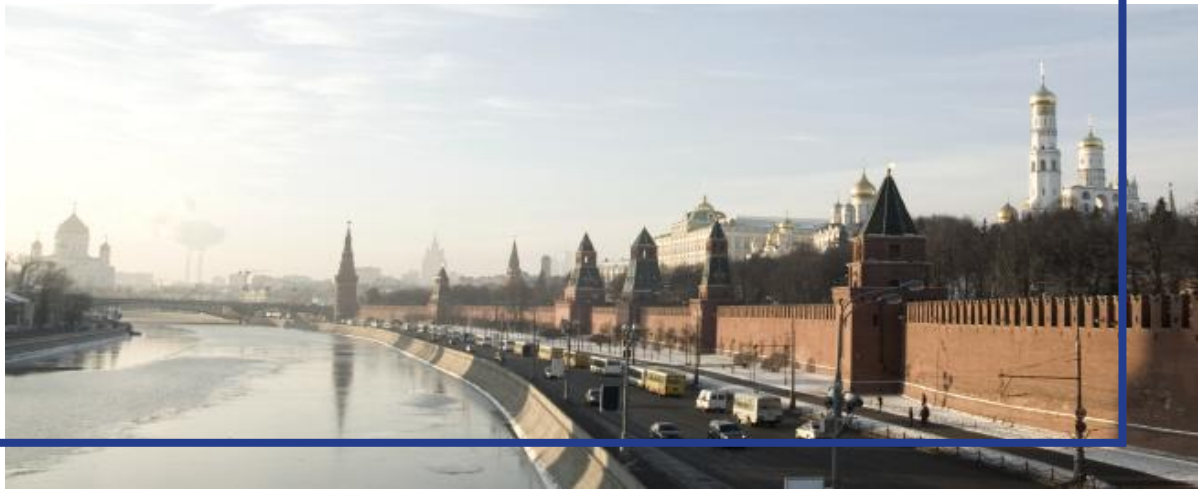


LEGAL NEWSLETTER



Moscow, April 2017

STATE REGISTRATION OF IMMOVABLE PROPERTY

On February 28, 2017 the Draft Law No. 112351-7 “On Amendments to Article 28 of the Federal Law “On State Registration of Immovable Property” was introduced in the State Duma of the Russian Federation. These amendments are aimed at facilitating and unifying the procedure of state registration of immovable property by confirming the title to real estate property with a hard copy of a certificate of title issued by the Federal Service for State Registration, Cadastre and Cartography. However, state registration of rights to immovable property will be evidenced not only by the certificate of title, but also by a record from the Unified State Register of Immovable Property and Related Transactions.

The practice of issuing such certificates was abolished by Federal Law No. 360-FZ dated July 3, 2016 “On the Amendments to Certain Legislative Acts of the Russian Federation”, which entered into force on July 15, 2016. However, it was widely criticized for creating obstacles to the owner in evidencing his or her title in case of technical issues with the Unified State Register of Immovable Property and Related Transactions.



CONSUMER PROTECTION IN E-COMMERCE

On March 18, 2017 the Draft Law No. 126869-7 “On Amendments to the Law of the Russian Federation “On Protection of Consumers’ Rights” was introduced in the State Duma of the Russian Federation.

The law will regulate the work of online aggregators in order to improve government control of e-commerce and to strengthen the guarantees for the protection of the rights of those consumers who buy goods and services on the Internet. It relates to the work of such aggregators as Yandex.Market, Price.ru, and others.

The aggregator (information intermediary) is an organization or an individual entrepreneur who, via the Internet, provides consumers with information on the goods or the services, rendered by the seller or the service provider (the “Seller”), and offers to enter into a sale and purchase agreement with the Seller, as well as to make a prepayment for the goods and the services to the Seller’s bank account.

The law imposes an obligation for aggregators to comply with a number of requirements related to the information on the goods, services and the Seller. The law also provides for a liability of aggregators for the provision of false information.

Currently the economic activity of aggregators, as far as they are not identified as typical Sellers, is not covered by the Law of the Russian Federation No. 2300-1 dated February 7, 1992 “On Protection of Consumers’ Rights” (the “Law on Protection of Consumers’ Rights”). Hence, the aggregators are not obliged to comply with the requirements of the Law On Protection of Consumers’ Rights related to the provision of information on the Seller, as well as with respect to contracted goods or services rendered.

The law provides that the aggregator shall return the received prepayment to the consumer within 10 calendar days upon the consumer’s demand under the following conditions:

- + the goods were not delivered on time, despite the prepayment made by the consumer;
- + the consumer notified the Seller on refusal to execute the sale and purchase agreement (service agreement) due to violation by the Seller of an obligation to transfer goods (to provide services) within an agreed term.

LIABILITY FOR BREACH OF DATA PROTECTION LAWS

On March 25, 2017 Federal Law No. 18-FZ dated February 22, 2017 “On Amendments to the Code of Administrative Offences” came into force. The amendments provide for an administrative liability for the failure to limit or restore the access to information, the access to which shall be limited or restored in accordance with the notification of the Federal Service for Supervision of Communications, Information Technology, and Mass Media



(“Roskomnadzor”). According to the amendments, non-fulfillment of the above obligation by communication service providers rendering Internet access services shall entail the imposition of a fine on the officials of a legal entity in the amount from RUB 3 000 to RUB 5 000, on individual entrepreneurs – from RUB 10 000 to RUB 30 000, and on legal entities – from RUB 50 000 to RUB 100 000.

→ LINKEDIN CASE FOLLOW-UP

In accordance with the official announcement made by Roskomnadzor on March 7, 2017 in view of LinkedIn’s refusal to transfer to Russia its servers storing the personal data of Russian users, LinkedIn will not be available in Russia, as far as LinkedIn Corp. has failed to reach an agreement with the Russian authorities to restore public access to the social networking website. Roskomnadzor also noted that it received the letter from Pablo Chavez, LinkedIn’s Vice President for global public policy, stating that the company is not ready to remedy violations of the Russian legislation. According to information published on Roskomnadzor’s website, LinkedIn refused to comply with the obligation of storing personal data of Russian citizens in Russia. Despite the decision of Roskomnadzor on blocking LinkedIn, the latter has recently been registered as a taxpayer with the Federal Tax Service, thus expressing its readiness to pay 18% VAT. LinkedIn will start paying VAT from April 25, 2017.

AMENDMENTS TO THE CIVIL CODE RELATED TO FINANCIAL TRANSACTIONS

The State Duma of the Russian Federation is considering the Draft Law No. 47538-6/10 “On Amendments to Part I and II of the Civil Code of the Russian Federation and Certain Legislative Acts” in a second reading. The Draft Law is aimed at amending certain provisions of the Civil Code, mostly in relation to financial transactions.

From this perspective, the most important novelties include:

- + different types of the assignor’s liability in case of assignment of rights may be established by law or by the agreement between the parties;
- + the lender could be forced to fulfill its promise to provide a loan. Currently, the loan agreement is considered to be concluded after the transfer of the loan amount (real transaction). However, the lender will have the right of refusal in case it is evident that the loan will not be repaid on time;
- + documentary and non-documentary securities, along with cash and non-cash funds, could be the objects of a loan agreement. Previously, the law was silent about the possibility to conclude loan agreements in respect of documentary and non-documentary securities;
- + interest rates under a loan agreement may be constant or adjustable. Except as otherwise agreed by the parties, the interest rate shall be paid on a monthly basis until the loan is repaid;
- + an escrow agreement will be introduced as a new type of financial transaction. Under the escrow agreement, the depositor undertakes to transfer the assets to



an escrow agent in order to fulfill depositor's obligations before the beneficiary. An escrow agent undertakes to keep the assets safe and transfer them to the beneficiary upon occurrence of circumstances set out in the escrow agreement.

- + The escrow agreement differs from the escrow account agreement which was introduced earlier, allowing parties to deposit assets in addition to money. The provisions governing escrow agreements shall apply to escrow account agreements, unless otherwise provided by special rules on escrow account agreements or the nature of the parties' relationship.

EXCLUSION OF LEGAL ENTITIES UNDER BANKRUPTCY PROCEDURE FROM THE EGRUL

Starting from June 28, 2017 Federal Law No. 488-FZ "On Amendments to Certain Legislative Acts" dated December 28, 2016 comes into force. These amendments prohibit the exclusion of legal entities undergoing a bankruptcy procedure from the Unified State Register of Legal Entities (the "EGRUL").

The aforementioned amendments were introduced to bring legislation in line with the position of the Constitutional Court of the Russian Federation, which in its Decision dated May 18, 2015 No. 10 - P ruled that the existing practice of exclusion of legal entities undergoing the bankruptcy procedure from the EGRUL contradicts the core principles of bankruptcy legislation.

Since the bankruptcy procedure is considered to prevail over the forced liquidation procedure, the Federal Tax Service (the "FTS") will not be allowed to exclude legal entities from the EGRUL in case the court has initiated a bankruptcy procedure against them. The amendments envisage that the FTS will be provided with electronic documents and thus notified (i) by state commercial courts on acceptance of an application for declaring a debtor bankrupt and (ii) by the operator of the bankruptcy register on information related to the debtor and the bankruptcy procedure progress. This information shall be displayed in the EGRUL.

OVERVIEW OF THE SUPREME COURT'S PRACTICE

- **Decision of the Supreme Court of the Russian Federation dated 30 January 2017 No. 305-ЭС16-14210 (contractual obligation to provide a bank guarantee)**

The Supreme Court ruled that an obligation of a contracting party to provide another party with a bank guarantee could be enforced in court, and failure to fulfill the obligation in question could lead to the imposition of a fine. The involvement of a third party (bank) in the fulfillment of an obligation does not mean that the respective obligation is non-executable as depending on the discretion of a third party. In addition, as soon as the issuance of a bank guarantee is a widespread practice in Russian banks, the request for issuance of a bank guarantee cannot be considered as a violation of the bank's rights or imposition of additional



obligations on it.

- **Decision of the Supreme Court of the Russian Federation dated 17 January 2017 No. 36-KГ16-26 (termination of obligations by agreement on termination fee)**

The Supreme Court stated that an agreement on the termination fee aimed at the termination of several obligations does not require the indication of particular grounds and subject matter of each obligation being thus terminated. Therefore, the courts cannot declare these agreements void in case they do not contain a detailed description of the obligations.

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