A·L·R·U·D

LAW FIRM SINCE 1991

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Obligatory pre-trial dispute resolution requirements and court order proceedings introduced to Russian arbitrazh (state commercial) proceedings

Dear All,

ALRUD Law Firm hereby informs that the amendments introduced to Arbitrazh procedural code in accordance with Federal law as of 02 March 2016 No. 47-FZ "On the amendments to APK RF" (hereinafter referred to as – "**Law**") will come into effect on 01 July 2016. The Law remains in line with the general trend on reduction of arbitrazh (state commercial) courts workload and speeding up arbitrazh proceedings.

We would like to inform you on the key and most important changes.

1 Obligatory pre-trial dispute resolution requirements

The amendments provide for change of the conditions precedent to referral of the civil case for consideration by arbitrazh court. From practical point of view, the following provisions are of primary importance:

1.1 In accordance with the amendments prior to filing a civil lawsuit with arbitrazh court a party shall take measures for pre-trial settlement of the dispute and file an official letter of claim to its counterparty.

The right to refer the case for consideration of the court shall therefore appear after 30 days from the moment of letter of claim sending.

1.2 Wording of the letter with regard to the stated claims shall correspond to the subject matter and grounds of a potential lawsuit, as well as terms and conditions of an obligation existing between the parties. This is a significant novel since the potential claimant shall clearly determine subject matter and amount of its claims at the very stage of the pre-trial letter sending.

1.3 The law entitles the parties to stipulate different rules and terms of pre-trial settlement.

Please however note that the possibility to fully set aside in the agreement the requirement of pre-trial settlement remains at question since wording of the Law does not explicitly stipulate such an option. Hence, there is a risk of invalidity of the provisions excluding pre-trial settlement conditions and therefore the necessity to comply with the legally stipulated 30-days term.

1.4 The law provides for certain case categories, which do not require pre-trial settlement.

Such categories include in particular corporate disputes, bankruptcy and class action cases, etc. Moreover, the pre-trial dispute resolution requirements do not apply to counter-claims (the former case law supported the opposite position).

1.5 According to clarifications given in the Resolution of Plenum of Supreme Court of the Russian Federation as of 21 January 2016 No.1 the expenses incurred due to pre-trial settlement (in

particular the postal expenses, fees for letter of claim drafting, etc.) qualify as legal costs and may be recovered from the losing party.

Taking the amendments into consideration, the parties who used general provisions on pre-trial settlement in the agreements may either exclude them (since they repeat legislative provisions) or elaborate the rules different from those stipulated by law and establishing detailed regulation, which would better reflect the parties' interests.

2 Proceedings on court order issuance

Arbitrazh proceedings are supplemented with the new special procedure on consideration of parties' requests for issuance of the court orders, which also have an effect of a writ of execution.

2.1 Court order may be issued on the following claims:

(A) Claims originating from the debt acknowledged by the debtor and confirmed with respective evidence not exceeding **400 thousand Rubles (approx.6 thousand USD)**;

(B) Claims originating from protest for promisory note non-payment or non-acceptance confirmed by public notary and not exceeding **400 thousand Rubles**;

(C) Claims for recovery of statutory payments and sanctions not exceeding **100 thousand Rubles (approx. 1,5 thousand USD)**.

2.2 Court order reversal

Court order becomes effective in case there are no objections of the debtor, which may be filed not later than 10 days since the moment of its receipt by the debtor. Should there be the objections, the court sets the order aside, which however does not preclude the claimant from filing a lawsuit in accordance with standard procedure.

2.3 Court order cassation appeal

The Law establishes rather strict rules for court order appeal: causational appeal claim is considered by the single judge and without the parties to the proceedings (unless the court decides otherwise). Moreover, the judge refers for consideration on their merits only those claims, which are found reasonable.

We therefore recommend using the more effective remedy by means of filing the objections against court order execution. In order to minimize the risks connected with missing the short procedural term for their filing it is reasonable to regularly check information about the court cases through "Electronic justice" system (kad.arbitr.ru).

This being so, court order proceedings introduced to Arbitrazh procedural code are the more effective remedy from perspective of timing, legal costs and enforcement, which however requires additional attention to control over issuance of such orders.

Hope that the information provided herein would be useful for you.

If any of your colleagues would also like to receive our newsletters, please let us know by sending us his/her email address in response to this message. If you would like to learn more about our Commercial practice or Dispute Resolution practice, please let us know about it in reply to this email. We will be glad to provide you with our materials.

If you have any questions, please, do not hesitate to contact Senior Partner of Dispute Resolution Practice **Vassily Rudomino** (vrudomino@alrud.com) and Partner of Commercial Practice **Maria Ostashenko** (mostashenko@alrud.com).

Kind regards,

ALRUD Law Firm

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