



Russia & Eurasia

September 3, 2010
Volume 1, Issue 1

COMMITTEE NEWSLETTER



See online version of this publication here:

<http://eurasian-law-newsletter.blogspot.com/>

Comments will be appreciated.

Welcome to the Russia/Eurasia Committee Newsletter

Welcome to the ABA Section of International Law Russia/Eurasia Committee Newsletter. Our Newsletter brings you timely, in-depth articles to complement the news we deliver to you in our biweekly *Eurasian Law Breaking News*.

Our Newsletter counts on you for its content. We publish it whenever we have articles to publish. This way, your contributions reach our readers quickly. The more you contribute, the more frequently we publish. And we welcome timely articles that have been published elsewhere.

This issue features these articles:

- Sergey Budylin, *Free Speech on the Runet: Constitution, Jurisdiction, and Mountain Law*, which discusses problems related to free speech and its control on the Internet. Sergey is an attorney with Roche & Duffay in Moscow and a Vice-Chair of the Russia/Eurasia Committee.
- Anna Kozmenko, *Russian Regulation of the Legal Profession at the Crossroads*, which examines recent proposals for reforming Russia's legal profession. Anna is an associate in the New York City office of Curtis, Mallet-Prevost, Colt & Mosie LLP. A Moscow native, Anna holds bachelors and master law degrees from the Peoples Friendship University of Russia. She also holds a Master in International Dispute Resolution from the University of Geneva and the Graduate Institute of International and Development Studies, where she studied with the support of a Scholarship of the President of the Russian Federation for Training Abroad. Her work is concentrated on international arbitration.
- Oksana Yeremeyeva and Richard Smith, *What's New in Ukraine*, which summarizes recent legislative developments in Ukraine. Oksana and Richard are attorneys with the RULG-Ukrainian Legal Group, P.A. Oksana is an attorney in the firm's Kyiv office. She received her master degree in law from the Kiev National Economic University and her LL.M. in International Business and Trade Law from the John Marshall Law School in Chicago. Her main areas of practice include business law, foreign investments, and corporate and transactional law. Richard is in the firm's Washington, D.C., office and is a graduate of the University of Baltimore School of Law. His practice focuses on corporate, commercial, labor, and securities law.

Also send us your news and announcements. In this issue, you will find an announcement of the webcast of the "Russia's Expanding Engagement In International Law in Trade,



Ukraine

What's New in Ukraine

Oksana Yeremeyeva and Richard Smith, RULG-Ukrainian Legal Group, P.A.

"When in Ukraine, do as the Ukrainians do." It is not just polite -- in many cases, it is the law. In our continuing effort to keep our Western business partners up-to-date on happenings in Kiev and the surrounding regions, RULG-Ukrainian Legal Group has prepared a short primer on a few of the most important recent changes to Ukrainian law. We hope that readers of the Russia/Eurasia Committee's newsletter will find this helpful.

Law "On Joint-Stock Companies"

As you may have heard, Ukraine passed a new law "On Joint Stock Companies" back in 2008. The law entered into force in April 2009, and the deadline for compliance is fast approaching. Effective 30 April 2011, Ukrainian joint-stock companies (JSCs) must fully comply with the law's requirements (some rules come into force earlier), including:

- New rules for cumulative voting, for performing transactions that involve conflicts of interest and material transactions, a new procedure for transferring shares, and an expanded role for the supervisory council.
- The transfer to a non-documentary share system. Ukrainian JSCs must transfer any shares in documentary form (aka "certificated shares") into non-documentary form by 29 October 2010. After this date, shares can only exist as non-documentary, electronic entries in the depository system.
- Last but not least, the Law of Ukraine "On the State Budget for 2010" amended the JSC law's provisions on dividend payment for the period running from 30 April 2010 through the end of the year. During this period, JSCs having net income in the reporting year or undistributed income for previous years must pay a minimum of 30% of their net income for this year, their undistributed income from previous years, or both, in the form of dividends.

"Anti-crisis Law" Repealed

Give a cheer! The crisis is passed, and with it, a few of Ukraine's more onerous "anti-crisis" regulations. On 27 April 2010, Ukraine passed its Law of Ukraine No. 2155 "On Amending Certain Laws of Ukraine to Promote Foreign Investments and Loans", which took effect on 15 May 2010. Among the restrictions now lifted:

- Accelerated repayment by resident borrowers, of loans taken out from non-resident lenders, is once again permitted.
- Foreign investments can be made in currencies other than Ukrainian Hryvnia, and do not need to be made through investment accounts opened with Ukrainian banks.
- State registration of foreign investments is no longer mandatory.

Anti- Money Laundering Law Restated

But it is not all good news in Ukraine. As we bid some laws farewell, we note the arrival of new, more onerous, restrictions on other fronts. Perhaps the most important piece of new



regulation this year (so far) is a recently restated version of the Law of Ukraine "On Preventing and Countering Money Laundering", which takes effect on 21 August 2010. The Law expands the range of financial operations subject to financial monitoring and the subjects of primary financial monitoring, imposes additional obligations upon them, and introduces a number of other changes, namely:

- Whereas prior to the changes, "subjects of primary financial monitoring" mainly mean "financial institutions", this list has been supplemented to include legal services providers, attorneys, notaries, auditors, auditing companies, and individual entrepreneurs providing accounting services.
- The definition of "financial transaction" has also been broadened. Whereas before, a "financial transaction" mean a payment, plain and simple, it is now defined to include any transaction involving assets (money, property, property rights and non-property rights) if such transaction is effected through a subject of primary financial monitoring.
- The "client" in a financial transaction is defined as any person using the services of a subject of primary financial monitoring. This client, any party to a contract for the transaction, as well as any persons acting on their behalf are all considered parties to a financial transaction.
- Legal services providers (as well as attorneys, notaries, auditors, auditing companies and individual entrepreneurs providing accounting services) must perform the obligations of a subject of primary financial monitoring if they participate in preparing and effecting the following transactions:
 - (i) sale and purchase of real estate;
 - (ii) management of client's assets;
 - (iii) management of a bank account or securities account;
 - (iv) raising funds for incorporation of legal entities, supporting their operation and managing them;
 - (v) incorporation of legal entities, supporting their operation and managing legal entities, as well as sale and purchase of legal entities.
- Subjects of primary financial monitoring must:
 - (i) register with the authorized state authority as a subject of primary financial monitoring, regularly report to such authority in cases stipulated by law, and notify such state authority of the winding up of the subject of primary financial monitoring;
 - (ii) set rules and develop programs for conducting financial monitoring and appoint an employee responsible for such financial monitoring;
 - (iii) carry out identification of clients in cases stipulated by law. If identification of a client is required, but impossible, the subject of primary financial monitoring must refuse to establish business relations with the client or to effect the financial transaction in question, and must report such person as well as the intended financial transaction(s) to the authorized state authority;
 - (iv) arrange for identification of financial transactions which are subject to financial monitoring and report such transactions to the authorized state authority as prescribed by law;



- (v) provide law enforcement authorities and other subjects of primary financial monitoring free access to documents or information available to them upon receiving a request in writing to this effect (when required to do so by law);
- (vi) when dealing with public persons and persons related to them, take measures to verify the sources of their income in the process of establishing business (contractual) relations with them and when providing services to such persons.
- The Law also envisages changes to the Law of Ukraine "On State Registration of Legal Entities and Individual Entrepreneurs", expanding the list of documents required to be filed for state registration of a legal entity. After the Law becomes effective, it will be necessary to additionally file "information with documents confirming the ownership structure of founders-legal entities which permits identifying individuals holding substantial participation in such legal entities". Substantial participation is understood to mean direct or indirect ownership of 10% or more participatory interest in a company's charter capital, shares or voting rights, whether such interest is held directly or indirectly.

Effective Date of Anti-corruption Legislation is Postponed

Giving evidence of where its priorities lie, now that the matter of money movement has been regulated, the government is slacking off on other "corruption" concerns. A number of new anticorruption laws and regulations were adopted in June 2009, but their entry into force has been twice postponed already. Initially planned to go into effect on 1 January 2010, they were pushed back first to 1 April 2010, and then to 1 January 2011.

Changes in the Procedure for Registering Ownership Rights to Real Estate

On 11 February 2010, the Law of Ukraine "On State Registration of Property Rights to Real Estate and Encumbrances Thereof" was restated to change the procedure for registering real property rights, among other changes. While the law itself became effective 16 March 2010, some individual provisions take effect on later dates. The changes to the registration procedure in particular will be applied as of 1 January 2012, and these changes include:

- Vesting authority for registering rights to real property with the Ministry of Justice of Ukraine.
- Setting new regulations for the registration of "construction-in-progress" and the registration of mortgages thereon.

Law "On Protection of Personal Data" is Adopted by the Parliament

As we learned above, the Verkhovna Rada taketh away (certain measures of privacy) on the financial transaction front, but never fear -- the Verkhovna Rada also giveth new privacy rights. On 1 June 2010, Ukraine's Parliament adopted a Law "On Protection of Personal Data", which will become effective on 1 January 2011. When that happens the law will:

- regulate use of personal data, provide certain rights and guarantees to subjects of personal data, and require that holders of such personal data protect it.
- Establish a state register in which personal databases must be registered, as required by the Law.

Draft Tax Code

In life, the only things that are certain are death and taxes. Legislation imitates life in at least one respect -- no report on legislative changes would be complete without a few proposed



tweaks to the tax laws. On 17 June 2010, Parliament adopted a Draft Tax Code in the first reading. Some of the changes proposed by the draft Tax Code include:

- (i) imposing real estate taxes;
- (ii) requiring that tax filings be made electronically;
- (iii) automatically imposing penalties for late payment on the first day of payment delay;
- (iv) establishing a class of "tax managers" to manage the assets of the tax-debtors;
- (v) and of course, changing taxation rates of all sorts.

For further information concerning the above please contact:

Irina Paliashvili, President & Senior Counsel: irinap@rulg.com

Oksana Yeremeyeva, Senior Counsel: Oksana.Yeremeyeva@ulg.kiev.ua

Free Speech on the Runet: Constitution, Jurisdiction, and Mountain Law

Sergey Budylin

I. Introduction

As a practical matter, governments often want to have some control over what their citizens say to each other. This wish may originate either from selfish interests of government officials, like the desire to protect themselves against public criticism, or from legitimate concerns, like the desire to maintain social peace and stability. But even if the attempts to control speech are made in good faith, they well may be overreaching.

In the modern world the freedom of speech is viewed not only as a "natural right" of a human being, but also as an indispensable tool of social development. Indeed, to remediate social deficiencies, they first must be spoken of. Accordingly, many nations take steps to explicitly limit the governmental ability to control speech. Usually the relevant provisions are included in written constitutions. The freedom of speech may also be protected by international conventions, like the European Convention on Human Rights.

Although the free-speech-related constitutional provisions of various countries often look similar, in reality the practical application of such provisions may be very different. For example, in the U.S. the freedom to criticize, up to the level of a direct insult, a public figure is virtually unlimited.^[1] On the other hand, In Germany, as in many other European countries, the freedom of expression is heavily counterbalanced by the political figure's constitutional right for human dignity.^[2] In Russia the "freedom to insult" is non-existent: insulting an official figure is a criminal offence against state power.^[3]

Controlling speech on the Internet is an especially challenging task for governments. The Internet allows a speaker to instantly address to, potentially, millions of listeners. At the same time, the Internet allows the speaker to retain at least a certain level of anonymity and, therefore, a certain level of invulnerability against governmental repression. These features make the Internet both very useful and, potentially, very dangerous tool. However, the practical possibilities for governments to control the Internet content are limited.