



Russia & Eurasia

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COMMITTEE NEWSLETTER



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

Comments will be appreciated.

Welcome to the 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:

The Overlap between Intellectual Property Laws and Competition Laws in the Russian Federation by Anne Wright Fiero. Anne Wright Fiero is the principal member of The Fiero Group, a research-based organization focused on assisting companies and individuals in developing and protecting their intellectual property globally. Anne is a graduate of the University of Chicago Law School, and obtained her degree from Duke University with high honors in Russian and Political Science. She has focused on the areas of intellectual property and competition law for almost twenty years. Anne also helps edit the Russian/Eurasian Committee's *Eurasian Law Breaking News*. Please feel free to contact her at: afiero@mchsi.com.

Update on the Personal Data Protection Regime in Ukraine by Irina Paliashvili and Olena Zolotarevska. Irina Paliashvili is the President and Senior Counsel of the Washington, D.C.-based RULG-Ukrainian Legal Group, P.A. Irina graduated with high honors from the Kiev State University Law School, where she also earned a Ph.D. in Private International Law. She also holds an LL.M. in International and Comparative Law from the George Washington University School of Law. Irina founded the CIS Local Counsel Forum, an informal network of managing and senior partners of leading business law firms in the CIS economic region. She currently holds the rotating chair of the CIS Leading Counsel Network. Irina is a Vice-Chair of the Russia/Eurasia Committee. Please feel free to contact her at: irinap@rulg.com.

Olena Zolotarevska is a Senior Counsel of the RULG-Ukrainian Legal Group, P.A. She graduated with honors in Private International Law from Kyiv National Taras Shevchenko University, Institute of International Relations. She co-founded and practices pro bono at the Law Clinic in Kyiv. At the RULG-Ukrainian Legal Group, she focuses her practice on commercial law and in private finance and the energy sector. Her email address is olena.zolotarevska@ulg.kiev.ua.



Overview of Ukrainian Deregulation Measures, also written by Irina Paliashvili, Yaroslav Shkovrets, and Olena Zolotarevska. Yaroslav Shkovrets is a Counsel at the RULG-Ukrainian Legal Group, P.A. He graduated from Kyiv National Taras Shevchenko University with a Master Degree in Law and a Master Degree in Translation with high honors. His practice includes corporate, labor, and real estate law. His email address is yaroslav.shkvorets@ulg.kiev.ua.

The RULG-Ukrainian Legal Group's contributions to this Newsletter were originally published as "legal alerts" in late May. Readers should check for more recent developments, as the matters covered in both articles might have been affected by recent legislative and administrative actions.

Please make plans now to attend the ABA Section of International Law's Third Annual Conference on the Resolution of CIS-Related Business Disputes in Moscow on September 12. This Conference, like its widely-acclaimed predecessors, is a "must attend" event for anyone interested in the resolution of business disputes in Russia and the other CIS countries. The Conference will feature world-class experts on topics including corruption in the courts, insolvency litigation, professional responsibility dilemmas in international disputes, shareholder rights, third-party funding of litigation and arbitration, state entities as parties in arbitration, choice of law in cross-border transactions, and a review of recent developments in business dispute resolution. A reception at Spaso House will follow the Conference. Registration is now open, and early registration is encouraged because the Conference and the Spaso House reception will be fully subscribed. This year's Conference will be held at the Ritz-Carlton. For more information, visit www.americanbar.org/groups/international_law or call +1-202-662-1660.

We hope you will enjoy this issue of the Committee Newsletter. We welcome your contributions to the next issue.

Dmitri Evseev

Christopher Kelley

Committee Co-Chairs

Russia

The Overlap Between Intellectual Property Laws and Competition Laws in the Russian Federation

Anne Wright Fiero

The relationship between intellectual property laws and competition laws is no stranger to debate. In the Russian Federation, as in the United States, the long-term goal of both systems is to benefit the consumer by ensuring free and fair competition and by encouraging investment and innovation in new technologies.¹ However, an inherent tension also exists between laws that may grant monopoly power to intellectual property holders and laws that restrict the exercise of that monopoly power.

Brief Overview of Russian Intellectual Property and Competition Laws

Russia amended its intellectual property laws in 2006 (effective January 1, 2008), consolidating them into the Russian Federation Civil Code. *See supra*, n. 2 ("Civil Code (Part Four)"). The latest iteration of intellectual property law provides for the private, exclusive ownership of intellectual activity, which includes the "individualization of legal persons, goods, works, and services." Civil Code (Part Four), art. 1225 (defining intellectual property,



Ukraine

a) administrative liability for evasion of personal database registration, creation of or work with a personal database before its state registration, and breach of regime of accessing personal data resulting in fines in amount USD 638-4,250; and

b) criminal liability for unlawful gathering, storage, usage and distribution of personal data without the person's consent is subject to fines in amount USD 1,700 – 4,250, compulsory community service or imprisonment.

The State Register of Personal Databases has not yet been established, therefore, for the moment, legislative requirements regarding state registration of personal databases cannot be practically complied with. For the Bill to become law, it must be finally adopted by the Parliament (in the second or third reading), signed by the President and officially published.

Overview of Ukrainian Deregulation Measures

Irina Paliashvili

Yaroslav Shkvorets

Olena Zolotarevska

The Government of Ukraine – the Verkhovna Rada (the "Parliament") and the Cabinet of Ministers - has recently developed and enacted a number of long-awaited measures in the sphere of deregulation of business activity and improvement of the regulatory regime (customs, public procurement). A special dedicated authority – the Cabinet of Ministers Deregulation Assignee – was established in February 2011 to oversee deregulation.

As a result of these efforts, between 2010 and 2011 Ukraine’s average Ease of Doing Business rank has improved by 2 points (from 147th to 145th place out of 183 economies). That rank in category Starting Business has improved by 18 points (from 136th to 118th place out of 183 economies).^[1]

Below is a brief overview of the key business deregulation measures pending or enacted within the past several months.

I. Enacted Deregulation Measures

- Cancellation of Licenses for Certain Types of Economic Activity:

The list of business activities subject to licensing was shortened by 24 positions, removing *inter alia*:

- cargo carriage services (except for dangerous cargoes) by air, river, sea, motor, and railway transport;
- pesticide and agricultural chemicals production (plant growth regulators only);
- design, production, use, operation, certification tests, subject-oriented research, expert examination, importation/exportation of crypt systems and crypt-based information protection systems; and
- design, production, and certification tests of holographic protection elements.

Relevant amendments were introduced to a number of Laws by the Law “On Amendments to Certain Legislative Acts of Ukraine Restricting State Regulation of Business Activities” No. 2608-VI dated 19 October 2011 and enacted on 16 November 2010.



- A Single Notification for Registration as a Single Payer of Contributions to State Funds:

As of 1 January 2011 the Pension Fund issues a single notification regarding registration of the legal entity as a single contributions payer, based on the information it receives from the Single State Registry of Legal Entities and Individuals-Entrepreneurs (“Single State Registry”) upon incorporation of a legal entity.

Before this measure was enacted, a newly incorporated legal entity had to be registered with four separate State Funds, have four notifications of registration therewith, and pay contributions and report to the:

- 1) Pension Fund;
- 2) State Fund for Social Insurance Against Unemployment;
- 3) State Fund for Social Insurance Against Temporary Loss of the Ability to Work; and
- 4) State Fund of Ukraine for Social Insurance Against Job Accidents and Professional Diseases.

This measure was introduced by the Law “On Collecting and Accounting of the Single Contribution to Mandatory State Social Insurance” No. 2464-VI dated 8 July 2010 and by subsequent Regulations of the Pension Fund Board No. 21-6 dated 27 September 2010.

- Cancellation of Special Permits of the Ministry of Internal Affairs for Corporate Seals:

The long-standing requirement that a special permit had to be obtained from the Ministry of Internal Affairs in order to manufacture, replace or destroy every corporate seal was abolished. This welcome measure will save businesses up to 400 UAH and up to one week of time per corporate seal.

This new rule became effective starting 21 February 2011 and was enacted by Cabinet of Ministers' Resolution No. 1216 On Amendments to Permits System Regulations dated 29 December 2010, and by subsequent Order of the Ministry of Internal Affairs Order No. 5 dated 11 January 2011 On Cancellation of the Ministry of Internal Affairs Order No. 7 dated 11 January 1999.

Moreover, the Government intends to abolish the mandatory requirement for corporate seals in general (see section II below), which will certainly facilitate and modernize business operations.

- Cancellation of State Registration Certificates for Legal Entities and Individuals-Entrepreneurs:

The State Registration Certificate was a mandatory document confirming the existence of a legal entity and attesting its registration (incorporation). Following cancellation of this document, Legal Entities and Individuals-Entrepreneurs will attest their existence by an excerpt from the Single State Registry (earlier this document attested the company's existence at the relevant date and was valid only for 30 days), which can be obtained via State Registrar Offices and no longer has an expiration term.

This measure was enacted by Law “On Amendments to Certain Legislative Acts of Ukraine Cancelling the State Registration Certificate of Legal Entity and Individual-Entrepreneur” No.3205-VI and is effective as of 7 May 2011.

- Introducing Electronic State Registration of Legal Entities and Individuals-Entrepreneurs:

Electronic registration will become available for State registration (incorporation) of Legal Entities and Individuals - Entrepreneurs, as well as for reservation of names of Legal Entities.



This measure takes effect as of 14 August 2011 and was included in the Law “On Amendments to the Law of Ukraine “On the State Registration of Legal Entities and Individuals - Entrepreneurs Concerning Electronic Registration” No. 2609-V adopted on 19 October 2010.

See RULG Legal Alert dated 23 November 2010 for more details
http://www.rulg.com/leg_alerts.asp

- Registration of Legal Entities Based on a Model Charter:

According to this measure, an option to use a Model Charter will become available during incorporation of a Legal Entity. At the same time, the founders of a Legal Entity will still have an option to develop their own original Charter. This measure would simplify the incorporation process for those founders who opt to use a Model Charter, but certainly such Model Charter might not be suitable for every business. The Model Charter will be approved by the Cabinet of Ministers.

This measure is introduced in the Law “On Amendments to Certain Legislative Acts of Ukraine Introducing the State Registration of Legal Entities on the Basis of a Model Charter”, which was adopted by the Parliament on 21 April 2011 and signed by the President. This Law introduces amendments to the Commercial Code, Civil Code, Law “On State Registration of Legal Entities and Individuals-Entrepreneurs”, and Law “On Economic Societies”. The Law will be enacted three months after official publication thereof.

- Abolishing Minimal Authorized Capital for Limited Liability Companies and Simplification of Certain State Registration Procedures:

The new measures include:

cancelling the minimal Authorized Capital for Limited Liability Companies;

defining the procedure for notifying creditors regarding decrease of the Limited Liability Company's Authorized Capital (creditors shall be notified by a letter within 30 days after the relevant decision is made); and

filing with the State Registrars simple copies instead of notarized copies or notarized originals of certain documents in order to introduce amendments to the Single State Registry.

These measures were introduced by the Law “On Amendments to Certain Legislative Acts of Ukraine Simplifying the Entrepreneurship Initiation Procedure”, which was adopted by the Parliament on 21 April 2011 and signed by the President. The Law will be enacted 10 days after official publication thereof.

- Introducing Electronic Customs Declarations:

On 5 April 2011 the State Customs Agency started a pilot project of accepting electronic declarations. The introduction of this procedure will accelerate the processes of customs control and clearance and will harmonize these processes with the international standards of electronic data exchange concerning customs clearance of goods, as well as reduce to a minimum the interaction with the customs officer thus preventing corruption.

The conditions for electronic declarations are approved by order № 216 of the State Customs Agency dated 17 March 2011. The Order simplifies the procedure of admitting enterprises to the electronic declarations, conducting its Register, and it provides for inclusion of customs brokers into the Register.



II. Pending Deregulation Measures

- Simplification of Termination (Liquidation) of a Legal Entity or Individual-Entrepreneur:

Ukraine has a very burdensome regime for liquidation of a business (Legal Entities or Individuals-Entrepreneurs) that requires a pre-liquidation audit by tax authorities. In practice, businesses have to wait for months and sometimes years for such audits.

The new rules for termination (liquidation) of a Legal Entity or Individual Entrepreneur include:

the defined timeframe for relevant tax and Pension Fund authorities to notify the State Registrar about possibility or impossibility to start the pre-liquidation audit or their objections to the liquidation; and

if no objections are received by relevant State Registrar within defined timeframe, a principle of tacit consent to state registration of entity's termination is introduced.

The above rules are stipulated in the Bill “On Amendments to Certain Legislative Acts of Ukraine Simplifying the Procedures for Terminating Legal Entities and Individuals-Entrepreneurs”, which was adopted by the Parliament as a basis, and after the second reading on 12 May 2011 was sent for further development to be followed by repeated consideration in the second reading.

- Cancellation of a Corporate Seal as a Mandatory Attribute:

Ukraine has an archaic requirement for a corporate seal as a mandatory attribute of every legal entity. In order to be valid, most of the documents, including contracts, need to be attested by the corporate seal. Abolishing these requirements would be a welcoming development considerably simplifying and modernizing business operations.

The following bills pending at the Parliament provide for abolishing mandatory requirement for a corporate seal and would make it optional:

Bill “On Amendments to Certain Legislative Acts of Ukraine Establishing the Principle of carrying out Business Activities by Private Law Subjects Without Using Seals” initiated by the Cabinet of Ministers, which was registered with the Parliament, considered, but rejected and sent for further development due to conflicts with existing legislation.

An alternative Bill with the same name, but slightly different content, initiated by a People's Deputy who represents the Party of Regions, which was not considered yet.

- Reducing Number of Documents required for Customs Clearance:

The Government plans to reduce by 70 % (from 65 to 20) the quantity of the permits necessary for customs clearance, in particular - sanitary-and-hygienic conclusions, phyto-and veterinary inspection certificates, etc. To clear cargoes, applicants should present to customs only the documents that are the basis for clearing goods through customs and for charging taxes. These measures are planned to take effect in the summer of 2011.

An Interagency working group (composed of representatives of the State Customs Agency and the State Committee on Industrial and Regulatory Policy and Entrepreneurship) will conduct the work on the reduction of the number of documents to be presented for the customs clearance, suggest relevant proposals and elaborate changes to legal acts.

The reduction of the number of documents for the customs control only means that these documents are no longer necessary for the customs clearance. The regulatory documents



that are still necessary for sales of imported goods in the territory of Ukraine can be obtained after the customs clearance.

- Introducing Electronic Public Procurement:

The Antimonopoly Committee of Ukraine (the “AMCU”) plans to introduce electronic public procurement in Ukraine.

According to the AMCU, the electronic system provides for a possibility of reducing corruption by excluding the human factor. The tender participant is not identified to the customer, and only at the latest stage the participant is revealed and the winner is determined. Specific terms of the introduction of the electronic public procurement system have not been determined yet. Besides, there may be a problem with application of electronic signatures, which are not yet widely used in Ukraine.

Bill № 8310 on amendments to the Law of Ukraine “On Realization of Public Procurement”, which introduces electronic public procurement (state purchases), was registered in the Parliament. The Bill follows the trend discussed by the Heads of antimonopoly bodies of the CIS countries at a special meeting of an Interstate Council of Antimonopoly Policy, which took place within the framework of the VII All-Russian forum-exhibition STATE ORDER-2011 on 23 – 25 March 2011 in Moscow. The Council decided to create a working group on the implementation of the electronic public procurement and summarize recommendations on antimonopoly policy and legislative improvements in the sphere of the state purchases for the CIS countries.

[1] www.doingbusiness.org data as of 18 May 2011

About the Russia/Eurasia Committee

The Russia/Eurasia Committee of the American Bar Association Section of International Law concentrates on the Eurasian region encompassing Russia, Ukraine, Moldova, Belarus, Kazakhstan, Uzbekistan, Armenia, Kyrgyzstan, Turkmenistan, Azerbaijan, Georgia, and Tajikistan. Its world-wide membership includes lawyers, law students, and others interested in the law and legal developments in these nations. The Committee sponsors a wide range of continuing legal education programs and other activities intended to keep its membership informed about the region’s laws, courts, and legal profession. For more information, including access to the Committee’s publications and other resources, please visit the Committee’s website at: <http://www.abanet.org/dch/committee.cfm?com=IC855000>

The Committee’s publications editorial board members are Sergey Budylin, Daniel Rothstein, Paul Jones, Maria Grechishkina, Scott Shostak, Dmitri Evseev, Franklin Gill, Katya Gill, and Christopher Kelley.